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# TEXAS REGISTER

*Volume 30 Number 44*

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*DeWitt County Courthouse  
Bryan DelLosSantos  
6th Grade*

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# THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at <http://www.oag.state.tx.us>. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

## Request for Opinions

### RQ-0399-GA

#### Requestor:

Mr. C. Tom Clowe Jr., Chair  
Texas Lottery Commission  
Post Office Box 16630  
Austin, Texas 78761-6630

Re: Scope of the confidentiality provisions of the Bingo Enabling Act, chapter 2001, Occupations Code (RQ-0399-GA)

### Briefs requested by November 10, 2005

#### RQ-0400-GA

#### Requestor:

The Honorable Bill Hill  
Dallas County District Attorney  
Frank Crowley Courts Building  
133 North Industrial Boulevard, LB 19  
Dallas, Texas 75207-4399

Re: Procedures for enforcing the school truancy laws under section 25.0951 of the Education Code (RQ-0400-GA)

### Briefs requested by November 10, 2005

#### RQ-0401-GA

#### Requestor:

The Honorable Carlos Valdez  
District Attorney  
105th Judicial District  
Nueces County Courthouse  
901 Leopard, Room 206  
Corpus Christi, Texas 78401-3681

Re: Whether the nepotism statutes are applicable to the employment by a junior college district of an individual who is related to a member of the district's board of regents (RQ-0401-GA)

## Briefs requested by November 19, 2005

### RQ-0402-GA

#### Requestor:

The Honorable Harold V. Dutton Jr.  
Chair, Committee on Juvenile Justice and Family Issues  
Texas House of Representatives  
Post Office Box 2910  
Austin, Texas 78768-2910

Re: Retroactivity of certain provisions of section 5.077(c), Property Code, which relates to liquidated damages in executory contracts for the sale of real property (RQ-0402-GA)

### Briefs requested by November 19, 2005

*For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.*

TRD-200504830  
Stacey Schiff  
Deputy Attorney General  
Office of the Attorney General  
Filed: October 26, 2005



## Opinions

### Opinion No. GA-0365

Colonel Thomas A. Davis Jr.  
Director  
Texas Department of Public Safety  
5805 North Lamar Boulevard  
Post Office Box 4087  
Austin, Texas 78773-0001

Re: Whether a peace officer commissioned by the Texas Department of Public Safety is an "appointed officer" for purposes of article XVI, section 1 of the Texas Constitution (RQ-0333-GA)

## SUMMARY

In the context of article V, section 24 and article XVI, section 30 of the Texas Constitution, the Texas Supreme Court in *Aldine Independent School District v. Standley* established a standard by which to determine whether an individual holds a public office. That standard asks whether "any sovereign function of the government is conferred upon the individual to be exercised by him for the benefit of the public largely independent of the control of others."

The *Aldine* standard is also the appropriate standard by which to determine, under article XVI, section 1 of the Texas Constitution, whether a particular position is a public office. We therefore overrule Attorney General Opinions H-1027 (1977) and DM-381 (1996) to the extent they conflict with this opinion.

If the officers in question are subject to discharge by the Director of the Department of Public Safety, they are not public officers subject to article XVI, section 1 of the Texas Constitution.

**Opinion No. GA-0366**

The Honorable Dib Waldrip  
Comal County Criminal District Attorney  
150 North Seguin, Suite 307  
New Braunfels, Texas 78130

Re: Whether, under an agreement entered into pursuant to section 242.001(d)(4)(B) of the Local Government Code, a county may assess a municipal drainage charge under chapter 402, subchapter C of the same code in connection with the approval of a plat for a subdivision in the municipality's extraterritorial jurisdiction (RQ-0334-GA)

**SUMMARY**

An agreement between a county and a municipality entered into pursuant to Local Government Code section 242.001(d)(4)(B), which provides for a consolidated and consistent set of regulations related to plats, subdivision construction plans, and subdivisions of land in the municipality's extraterritorial jurisdiction, may not authorize the county to assess a drainage charge on behalf of the municipal drainage utility system. In addition, an interlocal contract between a county and a municipality entered into under Government Code chapter 791 may not authorize the county to assess a drainage charge on behalf of the municipal drainage utility system.

**Opinion No. GA-0367**

The Honorable Mike Stafford  
Harris County Attorney  
1019 Congress, 15th Floor

Houston, Texas 77002

Re: Whether Harris County Animal Control must provide to a private corporation that contracts with the City of Houston information made confidential under chapter 826 of the Health and Safety Code (RQ-0338-GA)

**SUMMARY**

Because PetData is not a "governmental entity," Harris County Animal Control is prohibited from disclosing to PetData any "[i]nformation contained in a rabies vaccination certificate or in any record compiled from the information contained in one or more certificates that identifies or tends to identify an owner or an address, telephone number, or other personally identifying information of an owner of a vaccinated animal is confidential and not subject to disclosure under Chapter 552, Government Code."

**Opinion No. GA-0368**

The Honorable Norma Chavez, Chair  
Committee on Border and International Affairs  
Texas House of Representatives  
Post Office Box 2910  
Austin, Texas 78768

Re: Whether a civil service commission may authorize retroactive salary increases for municipal employees (RQ-0339-GA)

**SUMMARY**

Article III, section 53 of the Texas Constitution prohibits the Socorro Civil Service Commission from granting a pay increase to municipal employees effective from the date of their last evaluation, unless a policy for such pay increase was already in existence prior to the evaluation.

*For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.*

TRD-200504831  
Stacey Schiff  
Deputy Attorney General  
Office of the Attorney General  
Filed: October 26, 2005

◆ ◆ ◆



# EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

## TITLE 22. EXAMINING BOARDS

### PART 23. TEXAS REAL ESTATE COMMISSION

#### CHAPTER 535. GENERAL PROVISIONS

##### SUBCHAPTER F. EDUCATION, EXPERIENCE, EDUCATIONAL PROGRAMS, TIME PERIODS AND TYPE OF LICENSE

###### 22 TAC §535.63

The Texas Real Estate Commission adopts on an emergency basis amendments to §535.63, concerning Education and Experience Requirements for a License, by adding new subsections (d) and (e).

The amendments outline the process and conditions the Commission will use to renew licenses for salespersons subject to annual education who wish to renew on active status but are unable to timely complete Salesperson Annual Education (SAE) requirements because of the disaster conditions created by Hurricane Rita. This license renewal procedure will be available only to those licensed salespersons affected by Hurricane Rita in Jefferson, Orange, Jasper, Newton, Tyler, Hardin, Polk, Liberty, or Chambers Counties. The extension option will be available only for licenses that otherwise meet the requirements and expire on or before March 31, 2006. For licenses that expire after that date, the license is subject to §535.63(c).

As a result of the proclamation by the Governor of the State of Texas dated September 20, 2005, declaring a state of emergency due to Hurricane Rita, the Texas Real Estate Commission has determined that the conditions outlined in §2001.034 of the Texas Government Code concerning Emergency Rulemaking have been satisfied to adopt amendments to §535.63 concerning satisfaction of SAE requirements for licensees in Texas who reside in Jefferson, Orange, Jasper, Newton, Tyler, Hardin, Polk, Liberty, and Chambers Counties and were significantly affected by Hurricane Rita.

The amendments are adopted on an emergency basis under The Real Estate License Act (the Act), Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statute affected by this amendment is Texas Occupations Code, Chapter 1101.

§535.63. *Education and Experience Requirements for a License.*

(a) - (c) (No change.)

(d) Annual education requirements for a salesperson significantly impacted by Hurricane Rita. By the proclamation issued September 20, 2005, by the Governor of the State of Texas and notwithstanding any provisions of the Act or Rules to the contrary, the commission, on a case by case basis, may renew a current license in an active status for a salesperson licensee subject to Salesperson Annual Education (SAE) who meets the following requirements:

(1) The licensee resides in Jefferson, Orange, Jasper, Newton, Tyler, Hardin, Polk, Liberty, or Chambers County and was significantly impacted by Hurricane Rita;

(2) The licensee is unable to timely complete applicable SAE requirements as a result of the disaster;

(3) The licensee files a timely application to renew a current license and has satisfied all requirements other than the completion of applicable SAE requirements; and

(4) The current license expires on or before March 31, 2006.

(e) If a licensee subject to subsection (d) of this section has not completed applicable SAE requirements prior to the expiration date of the current license, the licensee shall complete the applicable SAE requirements within 120 days after the effective date of the new license. For the purpose of this subsection, a renewed license is effective the day following the expiration of the current license. SAE courses completed after expiration of the current license under this provision may not be applied to meet applicable SAE requirements for the following renewal of the license.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 17, 2005.

TRD-200504658

Loretta DeHay

General Counsel

Texas Real Estate Commission

Effective Date: October 17, 2005

For further information, please call: (512) 465-3900



## SUBCHAPTER I. LICENSES

### 22 TAC §535.92

The Texas Real Estate Commission adopts on an emergency basis amendments to §535.92, concerning Renewal: Time for Filing; Satisfaction of Mandatory Continuing Education Requirements, by adding new subsections (l) and (m).

The amendments outline the process and conditions the Commission will use to renew licenses on active status for licensees who are unable to timely complete Mandatory Continuing Education (MCE) because of the disaster conditions created by Hurricane Rita. This license renewal procedure will be available only to those licensed real estate brokers and salespersons affected by Hurricane Rita in Jefferson, Orange, Jasper, Newton, Tyler, Hardin, Polk, Liberty, and Chambers Counties.

No fee is required for extension of time to complete MCE under the new subsections. The extension option will be available only for licenses that otherwise meet the requirements and expire on or before March 31, 2006. For licensee that expires after that date, the licensee is subject to §535.92(f) should the licensee wish to renew a license on active status and extend the period of time to complete their MCE by 60 days and pay an additional \$200.

As a result of the proclamation by the Governor of the State of Texas dated September 20, 2005, declaring a state of emergency due to Hurricane Rita, the Texas Real Estate Commission has determined that the conditions outlined in §2001.034 of the Texas Government Code concerning Emergency Rulemaking have been satisfied to adopt amendments to §535.92 concerning satisfaction of MCE requirements for licensees in Texas who reside in Jefferson, Orange, Jasper, Newton, Tyler, Hardin, Polk, Liberty, and Chambers Counties and were significantly affected by Hurricane Rita.

The amendments are adopted on an emergency basis under The Real Estate License Act (the Act), Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statute affected by this amendment is Texas Occupations Code, Chapter 1101.

*§535.92. Renewal: Time for Filing; Satisfaction of Mandatory Continuing Education Requirements.*

(a) - (k) (No change.)

(l) By the proclamation issued September 20, 2005, by the Governor of the State of Texas and notwithstanding any provisions of the Act or Rules to the contrary, the commission, on a case by case basis, may renew a current license in an active status for a licensee who meets the following requirements:

(1) The licensee resides in Jefferson, Orange, Jasper, Newton, Tyler, Hardin, Polk, Liberty, or Chambers County and was significantly impacted by Hurricane Rita;

(2) The licensee is unable to timely complete MCE as a result of the disaster;

(3) The licensee files a timely application to renew a current license and has satisfied all requirements other than the completion of applicable MCE requirements; and

(4) The current license expires on or before March 31, 2006.

(m) If a licensee subject to subsection (l) of this section has not completed the required number of hours of MCE courses prior to the expiration date of the current license, the licensee shall complete the required number of hours of MCE courses within 120 days after the effective date of the new license. No fee is required to obtain an extension of time to complete the MCE. For the purpose of this sub-

section, a renewed license is effective the day following the expiration of the current license. MCE courses completed after expiration of the current license under this provision may not be applied to the following renewal of the license.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 17, 2005.

TRD-200504659

Loretta DeHay

General Counsel

Texas Real Estate Commission

Effective Date: October 17, 2005

For further information, please call: (512) 465-3900



## SUBCHAPTER R. REAL ESTATE INSPECTORS

### 22 TAC §535.208, §535.209

The Texas Real Estate Commission (TREC) adopts on an emergency basis amendments to §535.208, concerning Application for a License, and new §535.209, concerning Professional Inspector Corporations and Limited Liability Companies. TREC is simultaneously withdrawing existing emergency amendments to §535.208 and new §535.209 which appeared in the September 2, 2005, issue of the *Texas Register* (30 TexReg 5115). The amendments and new rule are adopted on an emergency basis to comply with new legislation that included revisions to Texas Occupations Code Chapter 1102 enacted during the 79th Legislative Session, Regular Session, by Senate Bill 810. The effective date of SB 810 is September 1, 2005. The adoption of the emergency amendments and new rule permits TREC to continue to comply with the effective date required by SB 810, and includes new revisions to the application form that is adopted by reference.

Chapter 1102 was revised to required licensing and renewal of corporations and limited liability companies that engage in professional home inspecting for buyers and sellers in Texas. The amendments to §535.208 adopt by reference a form to be used by corporations and limited liability companies applying for a professional inspector license and provides for a \$10 application fee. New §535.209 further clarifies licensing requirements for resident and non-resident corporations and limited liability corporations that act as professional inspectors in Texas. Certain foreign corporations and limited liability companies that are licensed as professional inspectors or the equivalent in another state may apply for a Texas professional inspector license as long as the designated person is a Texas licensed professional inspector.

The amendments and new rule are adopted on an emergency basis under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by the amendments and new rule are Texas Occupations Code, Chapters 1101 and 1102 and Senate Bill 810, 79th Legislature, R.S (2005).

*§535.208. Application for a License.*

(a) - (b) (No change.)

(c) The Texas Real Estate Commission adopts by reference the following forms approved by the commission. These forms are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188:

(1) - (3) (No change.)

(4) Application for a License as a Professional Inspector, Form REI 6-9; and[-]

(5) Business License Application for Professional Inspector License by a Limited Liability Company or Corporation, Form REI 7-0.

(d) - (f) (No change.)

*§535.209. Professional Inspector Corporations and Limited Liability Companies.*

(a) For the purposes of qualifying for, maintaining, or renewing a license, a corporation or limited liability company must designate one person holding an active Texas professional inspector license to act for it. The corporation or limited liability company may not act as a professional inspector during any period in which it has not designated a person to act for it who holds an active Texas professional inspector license. A professional inspector may not act as a designated person at any time while the professional inspector's license is inactive, expired, suspended or revoked.

(b) A corporation or limited liability company formed under the laws of a state other than Texas will be considered to be a Texas resident for purposes of Chapter 1102, Texas Occupations Code if it is qualified to do business in Texas; its officers or managers, its principal place of business and all of its assets are located in Texas; and all of its officers and directors or managers and members are Texas residents.

(c) Pursuant to §1102.112, Texas Occupations Code, a limited liability company created under the laws of another state or a corporation chartered in a state other than Texas may apply for a Texas professional inspector license if the entity meets one of the following requirements.

(1) The entity is licensed as a professional inspector or equivalent by the state in which it was created or chartered.

(2) The entity is licensed as a professional inspector or equivalent in a state in which it is permitted to engage in real estate brokerage business as a foreign limited liability company or corporation.

(3) The entity was created or chartered in a state that does not license limited liability companies or corporations, as the case may be, and the entity is lawfully engaged in the practice of inspecting homes for buyers or sellers in another state and meets all other requirements for applications for a license in Texas.

(d) The word "state" refers to the states, territories, and possessions of the United States and any foreign country or governmental subdivision thereof.

(e) Foreign corporations and limited liability companies also must be permitted to engage in business in this state to receive a Texas professional inspector license.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 17, 2005.

TRD-200504660

Loretta DeHay

General Counsel

Texas Real Estate Commission

Effective Date: October 17, 2005

Expiration Date: December 12, 2005

For further information, please call: (512) 465-3900



**22 TAC §535.216**

The Texas Real Estate Commission adopts on an emergency basis amendments to §535.216, concerning Renewal of License or Registration, by adding new subsections (h) and (i).

The amendments outline the process and conditions the Commission will use to renew licenses for professional, real estate, and apprentice inspectors who wish to renew on active status but are unable to timely complete Continuing Education requirements because of the disaster conditions created by Hurricane Rita. This license renewal procedure will be available only to those licensed home inspectors affected by Hurricane Rita who reside in Jefferson, Orange, Jasper, Newton, Tyler, Hardin, Polk, Liberty, and Chambers Counties; or are working as or for a Federal Emergency Management Agency contractor in a disaster area created by Hurricane Rita or Hurricane Katrina and who submit suitable documentation of same to the commission. The extension option will be available only for licenses that otherwise meet the requirements and expire on or before March 31, 2006. For licenses that expire after that date, the licensee is subject to §535.216(a).

As a result of the proclamation by the Governor of the State of Texas dated September 20, 2005, declaring a state of emergency due to Hurricane Rita, the Texas Real Estate Commission has determined that the conditions outlined in §2001.034 of the Texas Government Code concerning Emergency Rulemaking have been satisfied to adopt amendments to §535.216 concerning Renewal of License or Registration by adding new subsections (h) and (i) for home inspector licensees in Texas who reside in Jefferson, Orange, Jasper, Newton, Tyler, Hardin, Polk, Liberty, and Chambers Counties and were significantly affected by Hurricane Rita.

The amendment is adopted on an emergency basis under The Real Estate License Act (the Act), Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by this amendment are Texas Occupations Code, Chapter 1101 and Chapter 1102.

*§535.216. Renewal of License or Registration.*

(a) - (g) (No change.)

(h) By the proclamation issued September 20, 2005, by the Governor of the State of Texas and notwithstanding any provisions of

Texas Occupations Code, Chapter 1102, or this Subchapter to the contrary, the commission, on a case by case basis, may renew a current license in an active status for a professional, real estate, or apprentice inspector licensee subject to continuing education who meets the following requirements:

(1) The licensee resides in Jefferson, Orange, Jasper, Newton, Tyler, Hardin, Polk, Liberty, or Chambers County and was significantly impacted by Hurricane Rita, or is working as or for a Federal Emergency Management Agency contractor in a disaster area created by Hurricane Rita or Hurricane Katrina and submits suitable documentation of same to the commission;

(2) The licensee is unable to timely complete applicable continuing education requirements as a result of the disaster;

(3) The licensee files a timely application to renew a current license and has satisfied all requirements other than the completion of applicable continuing education requirements; and

(4) The current license expires on or before March 31, 2006.

(i) If a licensee subject to subsection (h) of this section has not completed applicable continuing education requirements prior to the expiration date of the current license, the licensee shall complete the

applicable continuing education requirements within 120 days after the effective date of the new license. For the purpose of this subsection, a renewed license is effective the day following the expiration of the current license. Continuing education courses completed after expiration of the current license under this provision may not be applied to meet applicable continuing education requirements for the following renewal of the license.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 17, 2005.

TRD-200504661

Loretta DeHay

General Counsel

Texas Real Estate Commission

Effective Date: October 17, 2005

For further information, please call: (512) 465-3900

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# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## TITLE 7. BANKING AND SECURITIES

### PART 1. FINANCE COMMISSION OF TEXAS

#### CHAPTER 5. HOME LOANS

##### 7 TAC §5.1

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Finance Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Finance Commission of Texas (the commission) proposes the repeal of §5.1, concerning required disclosures in connection with certain home loans. The commission has determined that the enabling statutory provision has expired.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the repeal as proposed will be in effect, there will be no fiscal implications for state or local government as a result of administering or enforcing the repeal.

Commissioner Pettijohn also has determined that for each year of the first five years the repeal as proposed will be in effect, the public benefit anticipated as a result of the repeal will be the elimination of a rule no longer required by statute. There is no anticipated cost to persons who are required to comply with the repeal as proposed. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the repeal as proposed.

Comments on the proposed repeal may be submitted in writing to Sealy Hutchings, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by e-mail to [sealy.hutchings@occc.state.tx.us](mailto:sealy.hutchings@occc.state.tx.us).

The repeal is proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code.

The statutory provisions (as currently in effect) affected by the proposed repeal are contained in Texas Finance Code, Chapter 343, Home Loans.

*§5.1. Required Disclosures in Connection with Certain Home Loans.* This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 21, 2005.

TRD-200504763

Leslie L. Pettijohn

Commissioner

Finance Commission of Texas

Earliest possible date of adoption: December 4, 2005

For further information, please call: (512) 936-7640



### PART 2. TEXAS DEPARTMENT OF BANKING

#### CHAPTER 33. MONEY SERVICES BUSINESSES

##### 7 TAC §33.3

The Finance Commission of Texas (commission) proposes to adopt new §33.3, concerning the Exclusion from Licensing for Bank Agents under the recently enacted Money Services Act (Act of May 26, 2005, 79th Leg., R.S., H.B. 2218, §1) ("MSA"), which took effect September 1, 2005.

The MSA, which is to be codified as Finance Code, Title 3, Subtitle E, Chapter 151, regulates persons that engage in money services businesses in Texas, specifically the businesses of money transmission and currency exchange. The MSA generally requires a person that conducts the money transmission or currency exchange business to have a license issued by the Texas Department of Banking ("department"), but recognizes certain exclusions from the licensing requirement. Section 151.003(3) and (4) provide, respectively, an exclusion for a federally insured financial institution and for a foreign bank branch or agency. Section 151.003(5) provides an exclusion for a person acting as an agent for a federally insured financial institution or a foreign bank branch or agency ("bank"), to the extent of the person's actions in that capacity, if certain conditions are satisfied. The bank must assume responsibility and be liable for satisfying the obligation owed the purchaser upon the agent's receipt of the purchaser's money. Additionally, the bank and the agent must enter into a written contract that appoints the person as agent, and the agent may act only within the scope of the authority conferred.

The §151.003(5) "agent" exclusion is not self-executing. In order to be excluded from licensing under that section, a person must demonstrate to the department that the statutory conditions are satisfied. Proposed new §33.3 specifies the documentation a person must submit to obtain the department's determination that the exclusion applies and that the person does not need to be licensed under Finance Code, Chapter 151.

Stephanie Newberg, Deputy Commissioner of the Texas Department of Banking, has determined that for the period the proposed new section is in effect, there will be no fiscal implications for

state or local governments as a result of enforcing or administering the proposed new section.

Ms. Newberg has also determined that, for each of the years the new section as proposed will be in effect, the anticipated public benefit will be the clarification what is required and how to obtain an exclusion from licensing as an agent of a federally insured financial institution or foreign bank branch or agency. No economic cost will be incurred by a person required to comply with the proposed new section, and there will be no adverse impact on small businesses or microbusinesses.

To be considered, comments on the proposed new section must be submitted in writing not later than 30 days after the date of publication of this notice. Comments should be addressed to Sarah Shirley, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294, or by email to [sarah.shirley@banking.state.tx.us](mailto:sarah.shirley@banking.state.tx.us).

The new section is proposed under Finance Code, §151.101, which authorizes the commission to adopt rules to administer and enforce Finance Code, Chapter 151.

The Money Services Act (Act of May 26, 2005, 79th Leg., R.S., H.B. 2218, §1, effective September 1, 2005) is affected by the proposed new section.

§33.3. How Do I Claim an Exclusion from Licensing because I Am an Agent for a Federally Insured Financial Institution or a Foreign Bank Branch or Agency?

(a) This section applies if you:

(1) provide marketing, sales or other services related to money transmission either directly or through your own agents or subagents;

(2) provide these services only as agent for a federally insured financial institution described in Finance Code, §151.003(3), or a foreign bank branch or agency described in Finance Code, §151.003(4); and

(3) want to be excluded from licensing under Finance Code, §151.003(5), the agent exclusion.

(b) To provide services related to money transmission under the agent exclusion, you must first obtain the Department's written determination that the statutory conditions for the exclusion are satisfied. You must submit to the Department:

(1) a general description of your business plan;

(2) a letter, signed by a duly authorized officer of the federally insured financial institution or foreign bank branch or agency, confirming that the institution, branch or agency:

(A) assumes all legal responsibility in the State of Texas for satisfying the money services obligations owed to Texas purchasers of the money transmission services upon receipt of the purchaser's money or monetary value by you or your agents or subagents; and

(B) assumes all risk of loss that a purchaser may suffer as a result of the failure of you or one of your agents or subagents to transmit the purchaser's funds to the entity;

(3) an executed agreement between you and the federally insured financial institution or foreign bank branch or agency that:

(A) includes terms consistent with the statements contained in the letter described in paragraph (2); and

(B) appoints you as the agent of the institution, branch or agency for purposes of money transmission, sets out the limits of

your authority, and includes your agreement to act only within the scope of that authority; and

(4) any other information the Department reasonably requests to determine if you qualify for the exclusion.

(c) The Department will review your submission and advise you whether you satisfy the requirements of Finance Code, §151.003(5), and are excluded under that subsection from the licensing requirements of Finance Code, Chapter 151.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 21, 2005.

TRD-200504755

Everette D. Jobe

Certifying Official

Texas Department of Banking

Proposed date of adoption: December 16, 2005

For further information, please call: (512) 475-1300

## PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

### CHAPTER 88. CONSUMER DEBT MANAGEMENT SERVICES

#### SUBCHAPTER A. REGISTRATION PROCEDURES

##### 7 TAC §88.109

The Finance Commission of Texas (the commission) proposes new §88.109, concerning the registration of debt management services providers.

In general, the purpose of the new rule is to clarify certain applicability issues arising out of Subchapter C, Consumer Debt Management Services, contained in Chapter 394 of the Texas Finance Code, as enacted by the 79th Texas Legislature in Senate Bill (SB) 1112. The proposed rule provides clarification on applicability.

Section 88.109 clarifies the applicability of the rules contained in 7 TAC Chapter 88, including a list of certain excepted transactions. The analysis that follows relates to the reasoning and support for this rule.

Uncertainty related to the definition of debt management services and what entities engage in the practice of debt management services under the state statute has arisen. Different types of business entities offer widely varying services in this industry. Upon review and categorization of the more common business models, a distinguishing element in this discussion has emerged: whether an entity takes control of consumers' money and then subsequently pays creditors through a debt management plan.

Under the standard model of a debt management plan, a consumer lists out debts owed, and a credit counselor makes arrangements with the consumer's creditors for payment schedules and interest rates. The consumer then directs monthly payments to the debt management plan which would then be re-

distributed to the creditors on behalf of the consumer under the new terms. A debt management company is sometimes called a "debt pooler," as it pools the funds of consumers in order to distribute to the various creditors.

In contrast, one typical model of a debt settlement company generally negotiates with creditors on behalf of consumers to obtain different lending terms and typically to negotiate an amount that extinguishes an existing payment obligation, and the consumers pay the creditors directly. This type of debt settlement company does not usually escrow or distribute consumer funds. However, some debt settlement companies, while not actually holding the money of consumers in trust accounts, do encourage or require that consumers set up a custodial account, in which the debt settlement company is the custodian who has control of the consumer's money. The text of Chapter 394 does not clearly delineate whether the activities of debt settlement companies are covered by its provisions.

An analysis of Chapter 394 from a statutory construction standpoint is necessary in order to properly construe the provisions of the statute and clarify its meaning by the proposal of §88.109. "The starting point for statutory analysis is the text of the statutory provision at issue. Our duty is to attempt to discern the legislative intent or purpose of the statute by, if reasonably possible, giving effect to the plain meaning of the statute's language." *Basden v. State*, 897 S.W.2d 319, 321 (Tex. Crim. App. 1995), *writ denied*, *Coleman v. Texas*, 516 U.S. 884, 116 S.Ct. 223 (citations omitted); *accord State v. Mancuso*, 919 S.W.2d 86, 87 (Tex. Crim. App. 1996), *pet. granted, aff'd sub nom.*

The statutory provision at issue in the applicability analysis is the key definition of "debt management service" contained in §394.202(6). The definition states: "In this subchapter: . . .

(6) 'Debt management service' means:

(A) the receiving of money from a consumer for the purpose of distributing that money to or among one or more of the creditors of the consumer in full or partial payment of the consumer's obligations;

(B) *arranging or assisting a consumer to arrange for the distribution of one or more payments to or among one or more creditors of the consumer in full or partial payment of the consumer's obligations*; or

(C) exercising control, directly or indirectly, or arranging for the exercise of control over funds of a consumer for the purpose of distributing payments to or among one or more creditors of the consumer in full or partial payment of the consumer's obligations." Tex. Fin. Code Ann. §394.202(6) (2005) (emphasis added).

The definition of "debt management service" (above) must then be read in conjunction with the exceptions from applicability listed in §394.203, as follows:

"(a) Except as otherwise provided by this subchapter, *this subchapter applies to a provider regardless of whether the provider charges a fee or receives consideration for a service.*

(b) The business of providing debt management services is conducted in this state if the debt management services provider solicits or contracts with consumers located in this state.

(c) This subchapter does not apply to:

(1) an attorney licensed to practice in this state, unless the attorney holds the attorney's self out to the public as a provider or

is employed, affiliated with, or otherwise working on behalf of a provider;

(2) a title insurance or abstract company employee or agent, or other person legally authorized to engage in escrow business in the state, only while engaged in the escrow business;

(3) a judicial officer or person acting under a court order;

(4) a person who has legal authority under federal or state law to act as a representative payee for a consumer, only to the extent the person is paying bills or other debts on behalf of that consumer;

(5) a person who pays bills or other debts owed by a consumer and on behalf of a consumer, if the money used to make the payments belongs exclusively to the consumer *and the person does not initiate any contact with individual creditors of the consumer to compromise a debt, arrange a new payment schedule, or otherwise change the terms of the debt*; or

(6) a financial institution, as defined by Section 201.101.

(d) The following are not debt management services for purposes of this subchapter:

(1) an extension of credit, including consolidation or refinance of a loan; and

(2) bankruptcy services provided by an attorney licensed to practice in this state.

(e) This subchapter applies to a person who seeks to evade its applicability by any device, subterfuge, or pretense." Tex. Fin. Code Ann. §394.203 (2005) (emphasis added).

When reading these two statutes together and focusing specifically on the emphasized phrases, a plain reading of the language not only appears to encompass debt management companies, credit counseling agencies, and debt settlement companies, but also results in the absurd consequence of applying to helpful family members and friends who, without compensation, merely place a call to try and aid another in paying bills or disputing a debt or utility bill. Thus, giving effect to the plain language interpretation would require friends, relatives, federal government employees (military counselors), as well as debt management companies to register as providers of debt management services, and in turn meet all of the eligibility and qualification requirements to register.

Reviewing the text of §394.202(6)(B), those who "arrang[e] or assist[ ] a consumer to arrange for the distribution of one or more payments to or among one or more creditors of the consumer in full or partial payment of the consumer's obligations" would include debt settlement companies, along with military counselors, friends, and relatives. Tex. Fin. Code Ann. §394.202(6) (2005). Next, when turning to §394.203 to seek exclusion of some or all of these parties, there is no language to do so. Subsection (a) of §394.203 specifically states, "this subchapter applies to a provider regardless of whether the provider charges a fee or receives consideration for a service." *Id.* §394.203(a). Furthermore, the exclusion contained in §394.203(c)(5) begins with language that seems to be leading to exempt the helpful family member or friend, but then concludes with the opposite by stating, "the person does not initiate any contact with individual creditors of the consumer to compromise a debt, arrange a new payment schedule, or otherwise change the terms of the debt." *Id.* §394.203(c)(5).

An interpretation of Chapter 394 that would require military counselors, friends, and relatives of debtors to register and comply with all the provisions of the statute would clearly lead to an absurd result. That interpretation would mean that every person who contacted a creditor on behalf of another would have to register or be subject to the penalties contained in Chapter 394. Therefore, every parent who contacted a credit card company on behalf of a college-age child or every adult child who contacted a creditor on behalf of an elderly parent would have to register and comply with Chapter 394. Including these types of people within the scope of Chapter 394 would undoubtedly be an absurd result.

A 1991 Texas Court of Criminal Appeals decision provides the proper standard for statutory interpretation in cases where a plain language reading yields absurd results:

"If the plain language of a statute would lead to absurd results, or if the language is not plain but rather ambiguous, then and only then, out of absolute necessity, is it constitutionally permissible for a court to consider, in arriving at a sensible interpretation, such extratextual factors as executive or administrative interpretations of the statute or legislative history."

"This method of statutory interpretation is of ancient origin and is, in fact, the only method that does not unnecessarily invade the lawmaking province of the Legislature. The courts of this and other jurisdictions, as well as many commentators, have long recognized and accepted this method as constitutionally and logically compelled." *Boykin v. State*, 818 S.W.2d 782, 785-86 (Tex. Crim. App. 1991) (footnote and citations omitted); *accord Ex Parte Spann*, 132 S.W.3d 390, 393 (Tex. Crim. App. 2004, *no pet.*); *Basden*, 897 S.W.2d at 321; *Mancuso*, 919 S.W.2d at 88.

Consequently, to arrive at a "sensible interpretation" of Chapter 394, the commission must now look to the legislative intent in the enactment of Senate Bill 1112. "In ascertaining legislative intent, we may consider the evil sought to be remedied, the legislative history, and the consequences of a particular construction." *City of Garland v. Public Util. Comm'n of Tex.*, 165 S.W.3d 814, 819 (Tex. App.—Austin 2005, *pet. filed*). Likewise, §312.005 of the Code Construction Act states: "In interpreting a statute, a court shall diligently attempt to ascertain legislative intent and shall consider at all times the old law, the evil, and the remedy." Tex. Gov't Code Ann. §312.005 (Vernon 2004). Also, §311.021 of the Texas Government Code provides that "[i]n enacting a statute, it is presumed that . . . a just and reasonable result is intended." Tex. Gov't Code Ann. §311.021(3) (Vernon 2004).

The commission believes that Chapter 394 is ambiguous on its face and that a plain reading of the statute will result in absurd consequences. In light of these considerations, §311.023 of the Texas Government Code permits the inclusion of extratextual factors in drafting an interpretation even without the ambiguity:

"In construing a statute, *whether or not the statute is considered ambiguous on its face*, a court may consider among other matters the:

- (1) object sought to be attained;
- (2) circumstances under which the statute was enacted;
- (3) legislative history;
- (4) common law or former statutory provisions, including laws on the same or similar subjects;
- (5) consequences of a particular construction;

(6) administrative construction of the statute; and

(7) title (caption), preamble, and emergency provision." Tex. Gov't Code Ann. §311.023 (Vernon 2004) (emphasis added).

The commission agrees with and has set forth this analysis in accordance with the statutory interpretation standard set by the *Boykin* court, even though the Government Code expressly addresses the use of legislative history. In other words, the commission has only resorted to reviewing legislative intent in this case after a plain reading of a statute was ambiguous and resulted in absurd consequences.

On March 31, 2005, the Senate Business and Commerce Committee heard testimony on SB 1112. Commissioner Pettijohn provided relevant testimony to the Committee. In an exchange between Commissioner Pettijohn and Senator Van de Putte, the Senator questioned if military credit counselors would have to be registered under this legislation and subsequent rules. Commissioner Pettijohn stated that her understanding is that the provisions of SB 1112 would not apply to military counselors. Commissioner Pettijohn continued by stating, "This bill involves taking the consumer's money and then turning around and giving the money to the consumer's creditors." Based on the mutual belief and understanding that military credit counselors only negotiate or make payment arrangements with creditors, Commissioner Pettijohn also said that it was not the intent of the bill to capture federal employees. Senator Eltife agreed that it was not the intent of SB 1112 to include military counselors.

Legislative history points to this uncontroverted testimony on the issue of handling consumer funds, as the above statements by Commissioner Pettijohn were never contradicted by the bill sponsor. In fact, the bill sponsor supported the above statements. Other senators or debt management industry members who registered in favor of the bill did not otherwise contradict these statements of intent. Chapter 394 was not intended to apply to the military because military counselors do not take control of money from consumers. Likewise, this intent can be extended to friends, relatives, and others who also do not exercise control over consumer funds.

When examining the context of Chapter 394 as a whole, this intent is evident in several provisions geared toward protecting the funds of consumers (e.g. §394.202(6)(A) and (C), §394.206 Bond; Insurance, and §394.211 Trust Account). The statute was intended to address the abuses by debt management companies that hold or control consumers' money. However, military counselors, friends, relatives, and companies that do not control consumers' money were not excluded, despite the attempt to focus on this targeted evil.

The purpose of §88.109 (Applicability) is to clarify the ambiguity found in Chapter 394 by implementing the legislative intent of SB 1112. Therefore, §88.109 serves to limit the application of Chapter 394 to entities who "receiv[e] funds from or control[] the funds of consumers for the purpose of distributing those funds to the creditors of consumers." Consequently, entities who do not hold or control client funds in accounts, military counselors, and helpful family members and friends are excluded. The rule looks to the intention of the legislature and requires that a provider must take control of the consumer's money in order to have engaged in a debt management service.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of administering the rule.



Commissioner Pettijohn has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of the new rule will be that the commission's rule will better enable those affected to comply with the statute and will result in more consistent and appropriate enforcement. Additional anticipated benefits are enhanced compliance with credit laws and more consistency in the debt management services provided to Texas consumers.

There are no anticipated economic costs incurred by a person required to comply with this proposal. However, there may be some costs associated in complying with the underlying statute. Aside from these potential costs, there will be no effect on individuals required to comply with the rule as proposed. It is anticipated that there will be no adverse economic effect on small or micro businesses as compared to the effect on large businesses.

Compliance with this rule is optional prior to January 1, 2006. SB 1112 provides for an effective date of September 1, 2005, although it does not require registration until January 1, 2006. For this reason the agency will not attempt to enforce the provisions of SB 1112 for actions that are either directly or indirectly related to registration until providers are required to register with the agency on January 1, 2006.

Comments on the proposed new rule may be submitted in writing to Sealy Hutchings, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by e-mail to [sealy.hutchings@occc.state.tx.us](mailto:sealy.hutchings@occc.state.tx.us).

The new section is proposed under Texas Finance Code §394.214, which authorizes the Finance Commission to adopt rules to carry out Texas Finance Code, Chapter 394, Subchapter C.

The statutory provisions (effective September 1, 2005) affected by the proposed new section is contained in Texas Finance Code, Chapter 394, Subchapter C.

§88.109. Applicability.

(a) The rules contained in this chapter of this title are applicable to a debt management services provider who is engaged in the business of receiving funds from or controlling the funds of consumers for the purpose of distributing those funds to the creditors of consumers. If a person or entity that is engaged in the business receives and takes into its control the funds of consumers, or has authority over consumer accounts, for the purpose of distribution to the consumers' creditors, the person will be considered a debt management services provider.

(b) The rules contained in this chapter of this title do not apply to:

(1) the exceptions as provided by Texas Finance Code, §394.203;

(2) transactions subject to the Money Services Act, Texas Finance Code, Chapter 151; or

(3) business relationships or agreements that purport to assist consumers with their debts to the extent that consumers' funds are not deposited into an account under the control of the person or business entity who is assisting the consumers with their debts.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 21, 2005.

TRD-200504764

Leslie L. Pettijohn  
Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: December 4, 2005

For further information, please call: (512) 936-7640



## SUBCHAPTER C. OPERATIONAL REQUIREMENTS

### 7 TAC §§88.301 - 88.305

The Finance Commission of Texas (the commission) proposes new Subchapter C, §§88.301 - 88.305, concerning operational requirements for debt management services providers.

In general, the purpose of the new rules is to clarify certain operational issues arising out of Subchapter C, Consumer Debt Management Services, contained in Chapter 394 of the Texas Finance Code, as enacted by the 79th Texas Legislature in Senate Bill (SB) 1112. The proposed rules provide a definition, record-keeping procedures, credit counseling standards, and prohibited acts and practices.

Section 88.301 defines the term "debt management service plan," which is not defined by statute.

Section 88.302 provides details on recordkeeping procedures, including the options of electronic or optically imaged records. This rule clarifies the acceptability of electronic or imaged records, as the statute does not address these options.

Section 88.303 clarifies refunds required at the time of cancellation, given that the statute does not address the issue of fees earned by the provider. The rule states that earned fees do not have to be refunded at the time a consumer cancels a debt management services agreement.

Section 88.304 outlines the credit counseling standards and accompanying documentation that a provider must maintain. The rule offers further guidance to providers so that they will better be able to comply with the statutory requirements.

An alternative approach for §88.304(a) that the commission may consider is as follows:

(a) For the purposes of Texas Finance Code, §394.202(2) and §394.208(a)(2), a provider may submit documentation of accreditation from:

- (1) the Council on Accreditation (COA);
- (2) the International Organization for Standardization (IOS), (i.e. ISO 9001); or
- (3) another independent, third-party accreditation organization for approval by the commissioner.

The commission specifically requests comments on §88.304(a) and its alternative proposal.

Section 88.305 explains that it is not a prohibited practice for a provider to incidentally pay an obligation for which a consumer does not have sufficient funds to cover when no fee is charged, as this situation is not addressed by statute.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the rules are in effect there

will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the new rules will be that the commission's rules will better enable those affected to comply with the statute and will result in more consistent and appropriate enforcement. Additional anticipated benefits are enhanced compliance with credit laws and more consistency in the debt management services provided to Texas consumers.

There are no anticipated economic costs incurred by a person required to comply with this proposal. However, there may be some costs associated in complying with the underlying statute. Aside from these potential costs, there will be no effect on individuals required to comply with the rules as proposed. It is anticipated that there will be no adverse economic effect on small or micro businesses as compared to the effect on large businesses.

Compliance with these rules is optional prior to January 1, 2006. SB 1112 provides for an effective date of September 1, 2005, although it does not require registration until January 1, 2006. For this reason the agency will not attempt to enforce the provisions of SB 1112 for actions that are either directly or indirectly related to registration until providers are required to register with the agency on January 1, 2006.

Comments on the proposed new rules may be submitted in writing to Sealy Hutchings, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by e-mail to sealy.hutchings@occc.state.tx.us.

These new sections are proposed under Texas Finance Code §394.214, which authorizes the Finance Commission to adopt rules to carry out Texas Finance Code, Chapter 394, Subchapter C.

The statutory provisions (effective September 1, 2005) affected by the proposed new sections are contained in Texas Finance Code, Chapter 394, Subchapter C.

§88.301. Definition.

"Debt management service plan"--An agreement between a person and a consumer in which:

- (1) the consumer agrees to deposit with the person a specified sum of money;
- (2) the person agrees to distribute the money among creditors of the consumer; and
- (3) the consumer may agree to pay a valuable consideration in exchange for the service.

§88.302. Recordkeeping.

(a) A provider must maintain records required by Texas Finance Code, §394.205 by using either a paper or manual recordkeeping system, electronic recordkeeping system, or optically imaged recordkeeping system unless otherwise specified by statute or regulation. All required books and records must be reasonably available for inspection at any time by the commissioner or the commissioner's authorized representatives.

(b) The commissioner may require that the provider make records available in the State of Texas for examination purposes.

§88.303. Cancellation of Debt Management Services Agreement.

Under Texas Finance Code, §394.209(a)(8), when a consumer cancels a debt management services agreement with a provider, the refund to the

consumer may exclude the fees that the provider has earned under the debt management services agreement prior to the time of cancellation.

§88.304. Credit Counseling Standards.

(a) For the purposes of Texas Finance Code, §394.202(2) and §394.208(a)(2), a provider must be accredited by an independent, third-party accreditation organization that covers, at a minimum, competency in the following core areas:

- (1) service environment and planning;
- (2) service accessibility and delivery;
- (3) training and supervision;
- (4) quality management and improvement;
- (5) ethical standards; and
- (6) financial education.

(b) The provider must submit documentation of the certification of a provider's credit counselors for approval by the commissioner.

(c) The provider must maintain documentation of individualized counseling and analysis that has been provided under Texas Finance Code, §394.208(a)(2).

§88.305. Prohibited Acts and Practices.

It is not a prohibited practice for a provider to, as an incidental consequence of managing the trust account and debt obligations, pay an obligation for a consumer that the consumer does not have a sufficient deposit to cover, and no fee is associated with the payment. A payment under these conditions does not constitute lending money to the consumer under Texas Finance Code, §394.212(3).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 21, 2005.

TRD-200504765

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: December 4, 2005

For further information, please call: (512) 936-7640



## **TITLE 10. COMMUNITY DEVELOPMENT**

### **PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

#### **CHAPTER 80. MANUFACTURED HOUSING**

##### **SUBCHAPTER G. STATEMENTS OF OWNERSHIP AND LOCATION**

##### **10 TAC §80.208**

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") proposes amendment to §80.208 to comply with HB 2438 (79th Legislature, 2005 Regular Session) relating to recording of tax liens on manufactured homes. The previous proposal in the August 12, 2005, *Texas Register* issue is withdrawn.

Figure: 10 TAC §80.208(d)- The tax lien form included in the proposed rule replaces the previously proposed form in §80.260(a)(14) published in the August 12, 2005, *Texas Register* issue.

Timothy K. Irvine, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, has determined that for the first five-year period that the amended rule as proposed is in effect there will be no fiscal implications for state government as a result of enforcing or administering this rule. There will be an indeterminate fiscal impact on local government due to anticipated costs of obtaining and compiling the required information and there being tax liens that they will not be able to record because the required information cannot be provided.

Mr. Irvine also has determined that for each year of the first five years the amendment as proposed is in effect the public benefit as a result of enforcing the section is to clarify procedures for filing tax liens on manufactured homes that comply with the Standards Act and that enhance the Department's ability to successfully locate and record tax liens.

The Department will conduct a hearing on the proposed rules on Friday, December 9, 2005 at 1:00 p.m. at the William B. Travis State Office Building, 1701 N. Congress, Room: 1-100, Austin, Texas 78701.

Comments may be submitted to Mr. Timothy K. Irvine, Executive Director of the Manufactured Housing Division, of the Texas Department of Housing and Community Affairs, P. O. Box 12489, Austin, Texas 78711-2489 or by e-mail at the following address [tim.irvine@tdhca.state.tx.us](mailto:tim.irvine@tdhca.state.tx.us). The deadline for comments is 30 days after publication in the *Texas Register*.

The amended section is proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the proposed amended rule.

§80.208. *Recording Tax Liens [Lien] on Manufactured Homes.*

(a) Tax liens shall be filed with the Department using the form provided in this section. No other form will be accepted for the filing of tax liens. The form must be properly completed. [For all manufactured homes sold, or to which ownership is transferred, after December 31, 1985 and before August 31, 2001 and for all manufactured homes that are not real property sold, or to which ownership is transferred after December 31, 1985, the recording of a tax lien notice filed with the department constitutes constructive notice of the existence of the lien to all purchasers of the manufactured home who purchase it after the date of recordation of the lien and before the collector for the taxing unit files a notice canceling the tax lien.]

(1) Each filing must set forth the name of the taxpayer, and, except as provided herein, the taxpayer must be a person reflected on the Statement of Ownership and Location at the time of the filing as being an owner of the home. For tax lien filings made prior to October 1, 2005, the names of the taxpayers will not be required or considered. For tax years 2005 and later, the taxpayer and a person reflected on the Statement of Ownership and Location as an owner of the home must be

the same person. If a filing is rejected because the names of the taxpayer and the owner do not appear to match, the filing will be recorded if the filing authority can, within two weeks of the date that the rejection of the filing is sent, correct the filing by providing evidence establishing that the taxpayer and the owner of the home are, in fact, the same and that the filing is otherwise proper.

(2) No tax lien will be recorded if any of the required information set forth on the promulgated form is missing or incorrect.

(b) In determining whether a taxpayer and a homeowner on whose home a tax lien is being filed are the same, the following factors will be considered: [If a tax lien filed with the department in accordance with this section ceases to exist, the collector for the taxing unit shall file a notice with the department stating that the lien no longer exists. Such notice shall be filed no later than ten (10) calendar days after payment of the taxes.]

(1) Whether the last names are identical. If one of the names is a hyphenated name, one portion of it must match the corresponding last name exactly.

(2) The first names must be reasonably similar. For example, an initial that corresponds to a name would be accepted, as would a common variation or nickname, such as "Nick" instead of "Nicholas" or "Jan" instead of "Janet."

(3) Suffixes, if present for both names, must match.

(c) Any tax lien filing that was received prior to October 1, 2005, missing the required information specified in these rules, which was corrected and resubmitted in recordable form on or before December 1, 2005, will be treated as having been timely filed; provided, however, that if, prior to the receipt and recordation of any such corrected filing, ownership of the subject home was transferred to a bona fide purchaser or a lien, other than a tax lien, was filed with the Department on that home, the transferee and/or the lien holder, as the case may be, were entitled to the issuance of a statement of ownership and location reflecting their interest free and clear of the tax lien made the subject of the correction filing, and the amended and corrected filing will not be recorded. [A personal property tax lien may not be enforced against a manufactured home transferred to a bona fide purchaser who does not have constructive notice of the existence of the lien.]

(d) For tax liens recorded after June 18, 2005, but prior to the effective date of these rules, those tax liens relating to tax years prior to 2001 will be disregarded and will not be treated as having been recorded.

Figure: 10 TAC §80.208(d)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 24, 2005.

TRD-200504803

Timothy K. Irvine  
Executive Director

Texas Department of Housing and Community Affairs  
Earliest possible date of adoption: December 4, 2005  
For further information, please call: (512) 475-2206

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**TITLE 19. EDUCATION**

## PART 2. TEXAS EDUCATION AGENCY

### CHAPTER 101. ASSESSMENT

#### SUBCHAPTER B. DEVELOPMENT AND ADMINISTRATION OF TESTS

##### 19 TAC §101.33

The State Board of Education (SBOE) proposes an amendment to §101.33, concerning student assessment. Section 101.33 addresses the release of tests. The proposed amendment would allow for the release of State-Developed Alternative Assessment II tests in 2005.

In September 2003, the SBOE adopted a schedule for the release of tests to comply with amendments made to Texas Education Code, §39.023(e), by the 78th Texas Legislature, which required that the release of test items be reduced to every other year. At the May 2004 meeting, the SBOE adopted a revised schedule for the release of tests to release all tests for the Texas Assessment of Knowledge and Skills (TAKS), State-Developed Alternative Assessment (SDAA), and Reading Proficiency Tests in English (RPTE) in every even-numbered year beginning in 2004.

The SDAA II, which assesses more of the Texas Essential Knowledge and Skills (TEKS) than the SDAA did and asks questions in more authentic ways, was first administered in 2005. The SBOE is proposing to amend its rule to adopt a different two-year release cycle for SDAA II since it is a fundamentally different test than SDAA. One advantage of revising the test release schedule would be that the new SDAA II could be viewed and used for appropriate educational purposes before the scheduled release in the summer of 2006. This would, however, place the SDAA II release schedule on a different release schedule than all other assessments.

The proposed amendment would add language to allow the release of all test items and answer keys for the SDAA II beginning with the 2005 assessment administered in the 2004-2005 school year and subsequent odd-numbered years.

Susan Barnes, associate commissioner for standards and programs, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Dr. Barnes has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment would be that, even though there are representative released SDAA tests available for students and parents to view and information booklets published for SDAA II, a revision to the schedule for release of SDAA II would allow access to the newest version of the test. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days

after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §39.023(e), which authorizes the State Board of Education to adopt rules relating to the release of statewide assessments and answer keys after the last time the instruments are administered for a school year.

The amendment implements the Texas Education Code, §39.023(e).

##### *§101.33. Release of Tests.*

Beginning in 2004 with the 2003-2004 school year and subsequent even-numbered school years, the Texas Education Agency (TEA) shall release all test items and answer keys for the Texas Assessment of Knowledge and Skills (TAKS); the State-Developed Alternative Assessment (SDAA); and the Reading Proficiency Tests in English (RPTE). Beginning with the 2005 assessment administered in the 2004-2005 school year and subsequent odd-numbered school years, the TEA shall release all test items and answer keys for the State-Developed Alternative Assessment II (SDAA II). After a period of five years, each test item that has been field-tested but not used on a test will be released.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 21, 2005.

TRD-200504749

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: December 4, 2005

For further information, please call: (512) 475-1497



## TITLE 22. EXAMINING BOARDS

### PART 9. TEXAS MEDICAL BOARD

#### CHAPTER 161. GENERAL PROVISIONS

##### 22 TAC §§161.1 - 161.3, 161.6

The Texas Medical Board proposes amendments to §§161.1 - 161.3 and 161.6, concerning General Provisions.

The amendment to §161.1 changes "Texas State Board of Medical Examiners" to "Texas Medical Board;" changes "Texas State Board of Physician Assistant Examiners" to "Texas Physician Assistant Board; makes Reference to all boards administered by the Texas Medical Board. The amendment to §161.2 changes "Texas State Board of Physician Assistant Examiners" to "Texas Physician Assistant Board. The amendments to §161.3 changes the number of members of the Texas Medical Board; changes the number of public members of the Board; adds "without excuse approved by a majority vote of the board". The amendment to §161.6 changes "Texas State Board of Physician Assistant Examiners" to "Texas Physician Assistant Board".

Michele Shackelford, General Counsel, Texas Medical Board, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications to state or local

government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the sections as proposed.

Ms. Shackelford also has determined that for each year of the first five years the amendments as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be updated rules to conform with statutory amendments and requiring a majority of the Board to excuse absences of members at meetings. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The following statutes, articles or codes are affected by this proposal: Section 161.1--§151.002(a)(1), Texas Occupations Code; Sections 161.2 and 161.6--§204.002(1), Texas Occupations Code; Section 161.3--§152.002(a), Texas Occupations Code.

#### *§161.1. Introduction.*

(a) The Texas [State Board of] Medical Board [Examiners], referred to as the "board" or the "Medical Board" [board], is an agency of the executive branch of state government statutorily empowered to regulate the practice of medicine in Texas. Any reference in these rules to the former Texas State Board of Medical Examiners means the Texas Medical Board. The Medical Board also provides oversight and support for the Texas Physician Assistant Board, referred to as the "Physician Assistant Board," and the Texas State Board of Acupuncture Examiners, referred to at the "Acupuncture Board."

(b) The board may adopt rules as necessary to govern its own proceedings, perform its duties, regulate the practice of medicine in Texas, and enforce applicable law.

(c) The board may act under its statute and rules through the Executive Director, Executive Committee, or another committee of the board.

#### *§161.2. Purpose and Functions.*

(a) The purpose of the board is to protect the public's safety and welfare through the regulation of the practice of medicine. The board fulfills its purpose primarily through the licensure and discipline of physicians and other allied health care providers as mandated by law.

(b) The board's functions include but are not limited to the following:

(1) Establish standards for the practice of medicine by physicians.

(2) Regulate the practice of medicine through the licensure and discipline of physicians.

(3) Provide oversight of the Texas [State Board of] Physician Assistant Board [Examiners] and the Texas State Board of Acupuncture Examiners as specified by law.

(4) Interpret the Medical Practice Act and applicable sections of the Physician Assistant Licensing Act, the Acupuncture Act, the Surgical Assistant Act and the Board Rules to physicians, physician

assistants, acupuncturists, surgical assistants, and the public to ensure informed professionals, allied health professionals, and consumers.

(5) Receive complaints and investigate possible violations of the Medical Practice Act and the Board Rules.

(6) Discipline violators through appropriate legal action to enforce the Medical Practice Act and the Board Rules.

(7) Provide a mechanism for public comment with regard to the Board Rules and the Medical Practice Act and the Surgical Assistant Act.

(8) Review and modify the Board Rules when necessary and appropriate.

(9) Examine and license qualified applicants to practice medicine, acupuncture, and surgical assisting in Texas in a manner that ensures that applicable standards are maintained.

(10) Provide recommendations to the legislature concerning appropriate changes to the Medical Practice Act and Surgical Assistant Act to ensure that the acts are current and applicable to changing needs and practices.

(11) Provide informal public information on licensees.

(12) Maintain data concerning the practice of medicine.

#### *§161.3. Organization and Structure.*

(a) The board shall consist of 19 [18] members appointed by the Governor with the advice and consent of the Senate.

(b) The board shall consist of the following composition: nine physicians with a degree of doctor of medicine (M.D.) and licensed to practice medicine in Texas for at least three years; three physicians with a degree of doctor of osteopathic medicine (D.O.) and licensed to practice medicine in Texas for three years; and seven [six] members who represent the public.

(c) The terms of board members shall be six years in length and shall be staggered so that the terms of not more than one-third of the members shall expire in a single calendar year. Upon completion of a term, a member shall continue to serve until a successor has been appointed. A member may be reappointed to successive terms as permitted by law at the discretion of the Governor.

(d) Each board member shall meet and maintain the qualifications for board membership as set by law.

(e) One ground for removal from the board occurs if a board member is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board. If the executive director of the board has knowledge that a potential ground for removal exists due to a member's failure to attend an adequate number of regularly scheduled board meetings, the executive director shall notify the president of the board of the ground. The president of the board shall then notify the governor's office that a potential ground for removal exists. A board member shall be considered to have been absent from a regularly scheduled board meeting if the member fails to attend at least a portion of either a full board session or a portion of a regularly scheduled committee meeting to which a member is assigned during such board meeting. Any dispute or controversy as to whether or not an absence has occurred shall be submitted to the full board for resolution by a majority vote after giving the purported absentee the opportunity to present information concerning the alleged absences and after allowing discussion by other members of the board.

(f) Each member of the board shall receive per diem as provided by law for each day that the member engages in the business of

the board and will be reimbursed for travel expenses incurred in accordance with the state of Texas and board's travel policies.

*§161.6. Committees of the Board.*

(a) Each board committee shall be composed of board members appointed by the president of the board and shall include at least one physician member who holds the degree of doctor of osteopathic medicine and one public member.

(b) The following are standing and permanent committees of the board. The responsibilities and authority of these committees shall include the following duties and powers, and other responsibilities and charges that the board may from time to time delegate to these committees.

(1) Disciplinary Process Review Committee:

(A) oversee the disciplinary process and give guidance to the board and board staff regarding means to improve the disciplinary process and more effectively enforce the Medical Practice Act and board rules;

(B) monitor the effectiveness, appropriateness and timeliness of the disciplinary process and enforcement of the Medical Practice Act and board rules;

(C) make recommendations regarding resolution and disposition of specific cases and approve, adopt, modify, or reject recommendations from board staff or board representatives regarding actions to be taken on pending cases;

(D) approve dismissals of complaints and closure of investigations; and

(E) make recommendations to the board staff and the board regarding policies, priorities, budget, and any other matters related to the disciplinary process and enforcement of the Medical Practice Act and board rules.

(2) Executive Committee:

(A) ensure records are maintained of all committee actions;

(B) delegate tasks to other committees;

(C) take action on matters of urgency that may arise between board meetings;

(D) assist in the presentation of information concerning the board and the regulation of the practice of medicine to the Legislature and other state officials;

(E) review staff reports regarding finances and the budget;

(F) formulate and make recommendations to the board concerning future board goals and objectives and the establishment of priorities and methods for their accomplishment;

(G) study and make recommendations to the board regarding the roles and responsibilities of the board offices and committees;

(H) study and make recommendations to the board regarding ways to improve the efficiency and effectiveness of the administration of the board;

(I) study and make recommendations to the board regarding board rules or any area of a board function that, in the judgment of the committee, needs consideration; and

(J) make recommendations to the board regarding matters brought to the attention of the executive committee.

(3) Finance Committee:

(A) review staff reports regarding finances and the budget;

(B) assist in the presentation of budget needs to the Legislature and other state officials;

(C) recommend proper fees for the agency to charge; and

(D) consider and make recommendations to the board regarding any aspect of board finances.

(4) Legislative Committee:

(A) review and make recommendations to the board regarding proposed legislative changes concerning the Medical Practice Act and the regulation of medicine;

(B) establish communication with members of the Legislature, trade associations, consumer groups, and related groups;

(C) assist in the organization, preparation, and delivery of information and testimony to members and committees of the Legislature; and

(D) make recommendations to the board regarding matters brought to the attention of the legislative committee.

(5) Licensure Committee:

(A) review applications for licensure and permits, make determinations of eligibility and report to the board its recommendations as provided by the Medical Practice Act and board rules;

(B) review board rules regarding licensure and make recommendations to the board regarding changes or implementation of such rules;

(C) evaluate each examination accepted by the board and develop each examination administered by the board;

(D) investigate and report to the board any problems in the administration of examinations and recommend and implement ways of correcting identified problems;

(E) make recommendations to the board regarding postgraduate training permits and issues concerning physicians in training;

(F) maintain communication with Texas medical schools;

(G) develop rules with regard to international medical schools in the areas of curriculum, faculty, facilities, academic resources, and performance of graduates;

(H) study and make recommendations regarding documentation and verification of records from all applicants for licensure or permits;

(I) review applications for acudetox specialist certification, make determinations of eligibility, and report to the board its recommendations as provided by Texas Occupations Code Annotated, 205.303;

(J) review applications for acupuncture licensure recommended by the Texas State Board of Acupuncture Examiners, make determinations of eligibility, and report to the board its recommendations;

(K) review applications for approval and certification of non-profit health organizations pursuant to the Medical Practice Act;

(L) review applications and reports for continued approval and certification of non-profit health organizations pursuant to the Medical Practice Act;

(M) make initial determinations and recommendations to the board regarding approval, denial, revocation, decertification, or continued approval and certification of non-profit health organizations pursuant to the Medical Practice Act;

(N) review board rules regarding non-profit health organizations, and make recommendations to the board regarding changes or implementation of such rules; and

(O) make recommendations to the board regarding matters brought to the attention of the licensure committee.

(6) Public Information/Physician Profile Committee:

(A) develop information for distribution to the public;

(B) review and make recommendations to the board in regard to press releases, newsletters, web-sites and other publications;

(C) study and make recommendations to the board regarding all aspects of public information and public relations;

(D) receive information from the public concerning the regulation of medicine pursuant to a published agenda item and board rules;

(E) study and make recommendation to the board regarding all aspects of physician profiles; and

(F) make recommendations to the board regarding matters brought to the attention of the public information/physician profile committee.

(7) Standing Orders Committee:

(A) review and make recommendations to the board regarding board rules pertaining to standing orders;

(B) study and make recommendations to the board regarding issues concerning or referred by the Texas State Board of Acupuncture Examiners or other acupuncture issues;

(C) study and make recommendations to the board regarding issues concerning or referred by the Texas ~~[State Board of]~~ Physician Assistant Board ~~[Examiners]~~;

(D) study and make recommendations to the board concerning ethical issues related to the practice of medicine; and

(E) make recommendations to the board regarding matters brought to the attention of the standing orders committee.

(8) Telemedicine Committee:

(A) review, study, and make recommendations to the board concerning the practice of telemedicine, including but not limited to licensure, regulation, and/or discipline of telemedicine license holders or applicants;

(B) review, study, and make recommendations to the board concerning interstate and intrastate telemedicine issues;

(C) review, study, and make recommendations to the board concerning board rules regarding or affecting the practice of telemedicine; and

(D) review, study, and make recommendations to the board concerning any other issue brought to the attention of the committee.

(c) With statutory or board authorization, the president may appoint, disband, or reconvene standing, ad hoc, or advisory committees as deemed necessary. Such committees shall have and exercise such authority as may be granted by the board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 24, 2005.

TRD-200504773

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Executive Director

Texas Medical Board

Earliest possible date of adoption: December 4, 2005

For further information, please call: (512) 305-7016



## CHAPTER 163. LICENSURE

### 22 TAC §§163.1, 163.2, 163.4 - 163.6

The Texas Medical Board proposes amendments to §§163.1, 163.2, 163.4 - 163.6 and the repeal of §§163.3, 163.7 and 163.14, concerning Licensure.

The amendments to §163.1 change "Texas State Board of Medical Examiners" to "Texas Medical Board;" delete acceptable licensing examination from definitions to eliminate duplication; delete definitions regarding Telemedicine to reorganize and move to Chapter 172. The amendments to §163.2 designate the primary license issued by the Medical Board as a "Full" license; combine §163.3 into §163.2 for better organization and clarity. The amendments to §163.4 change "Texas State Board of Medical Examiners" to "board." The amendments to §163.5 change "Texas State Board of Medical Examiners" to "board." The amendments to §163.6 refer to "successor" or USMLE examination; add "COMLEX-USA as acceptable examination; deletes NBOME I, II, and FLEX II as acceptable exam; eliminate exceptions for three-attempt limit; make rule follow statutory change for limit on time to complete examination. Section 163.3 is being incorporated into §163.2. Section 163.7 is being incorporated into §172.11. Section 163.14 is being incorporated into §172.12. Therefore each of these sections are repealed and will be reserved for future rulemaking.

Michele Shackelford, General Counsel, Texas Medical Board, has determined that for the first five-year period the amendments and repeals are in effect there will be no fiscal implications to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the sections as proposed.

Ms. Shackelford also has determined that for each year of the first five years the amendments and repeals as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be updated rules in accordance with statutory amendments; reorganization to simplify and provide clarity; provide consistency in referring to the Medical Board and updating rules in accordance with statutory amendments and updating rules to match current examinations being given by examination organizations. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The following statutes, articles or codes are affected by this proposal: Sections 163.1, 163.4, 163.5--§151.001, Texas Occupations Code; Section 163.2--none, Section 163.6--§153.003, Texas Occupations Code and §155.056, Texas Occupations Code.

#### §163.1. Definitions.

[(a)] The following words and terms, (concerning General Definitions) when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Acceptable approved medical school--A medical school or college located in the United States or Canada that has been accredited by the Liaison Committee on Medical Education or the American Osteopathic Association Bureau of Professional Education.

(2) Acceptable unapproved medical school--A school or college located outside the United States or Canada that:

(A) is substantially equivalent to a Texas medical school; and

(B) has not been disapproved by another state physician licensing agency unless the applicant can provide evidence that the disapproval was unfounded.

(3) Affiliated hospital--Affiliation status of a hospital with a medical school as defined by the Liaison Committee on Medical Education and documented by the medical school in its application for accreditation.

(4) Applicant--One who files an application as defined in this section.

(5) Application--An application is all documents and information necessary to complete an applicant's request for licensure including the following:

(A) forms furnished by the board, completed by the applicant:

(i) all forms and addenda requiring a written response must be typed or printed in ink;

(ii) photographs must meet United States Government passport standards;

(B) all documents required under §163.5 of this title (relating to Licensure Documentation); and

(C) the required fee, payable by check through a United States bank.

(6) Board--Texas [State Board of] Medical Board [Examiners].

(7) Continuous--12 month periods of uninterrupted post-graduate training with no absences greater than 21 days, unless such absences have been approved by the training program.

(8) Eligible for licensure in country of graduation--An applicant must be eligible for licensure in the country in which the medical school is located except for any citizenship requirements.

[(9) Examinations accepted by the board for licensure:]

[(A) United States Medical Licensing Examination (USMLE); with a score of 75 or better, or a passing grade if applicable, on each step, with all steps passed within seven years:]

[(B) Federation Licensing Examination (FLEX); on or after July 1, 1985; passage of both components within seven years with a score of 75 or better on each component:]

[(C) Federation Licensing Examination (FLEX); before July 1, 1985, with a FLEX weighted average of 75 or better in one sitting:]

[(D) National Board of Medical Examiners Examination (NBME) or its successor with all steps passed within seven years:]

[(E) National Board of Osteopathic Medical Examiners Examination (NBOME) or its successor with all steps passed within seven years:]

[(F) Medical Council of Canada Examination (LMCC) or its successor, with all steps passed within seven years:]

[(G) State board licensing examination; passed before January 1, 1977, (with the exception of Virgin Islands, Guam, Tennessee Osteopathic Board or Puerto Rico then the exams must be passed before July 1, 1963); or]

[(H) One of the following examination combinations with a score of 75 or better on each part, level, component, or step, all parts, levels, components, or steps must be passed within seven years:]

[(i) FLEX I plus USMLE 3:]

[(ii) USMLE 1 and USMLE 2 (including passage of the clinical skills component if applicable); plus FLEX II:]

[(iii) NBME I or USMLE 1, plus NBME II or USMLE 2 (including passage of the clinical skills component if applicable); plus NBME III or USMLE 3:]

[(iv) NBME I or USMLE 1, plus NBME II or USMLE 2 (including passage of the clinical skills component if applicable); plus FLEX II:]

[(v) NBOME I, plus NBOME II, plus FLEX II:]

[(vi) the NBOME Part I or COMLEX Level I and NBOME Part II or COMLEX Level II and NBOME Part III or COMLEX Level III:]

[(I) An applicant must pass each part of an examination within three attempts, except that an applicant who has passed all but one part of an examination within three attempts may take the remaining part of the examination one additional time:]

[(J) Notwithstanding subparagraph (I) of this paragraph, an applicant is considered to have satisfied the requirements of this section if the applicant:]

[(i) passed all but one part of an examination approved by the board within three attempts and passed the remaining part of the examination within five attempts:]

[(ii) is specialty board certified by a specialty board that:]

[(i) is a member of the American Board of Medical Specialties; or]



~~[(H)]~~ is a member of the Bureau of Osteopathic Specialists; and]

~~[(iii)]~~ completed in this state an additional two years of postgraduate medical training approved by the board;]

~~[(K)]~~ An applicant who has not passed an examination for licensure in a ten-year period prior to the filing date of the application must:]

~~[(i)]~~ pass a monitored specialty certification examination or formal evaluation; a monitored recertification examination or formal evaluation; or a monitored examination of continued demonstration of qualifications by a board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists within the preceding ten years;]

~~[(ii)]~~ obtain through extraordinary circumstances, unique training equal to the training required for specialty certification as determined by a committee of the board and approved by the board, including but not limited to participation for at least six months in a training program approved by the board within twelve months prior to the application for licensure; or]

~~[(iii)]~~ pass the Special Purpose Examination (SPEX) within the preceding ten years;]

(9) ~~[(40)]~~ Good professional character--An applicant for licensure must not be in violation of or committed any act described in the Medical Practice Act, TEX. OCC. CODE ANN. §§164.051-.053.

(10) ~~[(41)]~~ One-year training program--a program that is one continuous year of postgraduate training approved by the board that is:

(A) accepted for certification by a specialty board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists; or

(B) accredited by one of the following:

(i) the Accreditation Council for Graduate Medical Education, or its predecessor;

(ii) the American Osteopathic Association;

(iii) the Committee on Accreditation of Preregistration Physician Training Programs, Federation of Provincial Medical Licensing Authorities of Canada;

(iv) the Royal College of Physicians and Surgeons of Canada; or

(v) the College of Family Physicians of Canada; or

(C) a postresidency program, usually called a fellowship, performed in the U.S. or Canada and approved by the board for additional training in a medical specialty or subspecialty.

(11) ~~[(42)]~~ Sixty (60) semester hours of college courses--60 semester hours of college courses other than in medical school that are acceptable to The University of Texas at Austin for credit on a bachelor of arts degree or a bachelor of science degree; the entire primary, secondary, and premedical education required in the country of medical school graduation, if the medical school is located outside the United States or Canada; or substantially equivalent courses as determined by the board.

(12) ~~[(43)]~~ Substantially equivalent to a Texas medical school--A medical school or college that is an institution of higher learning designed to select and educate medical students; provide students with the opportunity to acquire a sound basic medical education through training in basic sciences and clinical sciences. The

school should provide information about the school's program of advancement of knowledge through research; the school's development of programs of graduate medical education to produce practitioners, teachers, and researchers; and, the school's program to provide opportunity for postgraduate and continuing medical education, for the board's consideration. In addition to be determined substantially equivalent to a Texas medical school, the medical school's characteristics shall include, but not be limited to, the following:

(A) The facilities for basic sciences and clinical training (i.e., laboratories, hospitals, library, etc.) shall be adequate to ensure opportunity for proper education.

(B) The admissions standards shall ensure that the medical school has a pool of applicants sufficiently large and possessing United States national level qualifications to fill its entering class. Medical schools must select students who possess the intelligence, integrity, and personal and emotional characteristics necessary for them to become effective physicians.

(C) The basic sciences curriculum shall include the contemporary content of those expanded disciplines that have been traditionally titled gross anatomy, biochemistry, biology, physiology, microbiology, immunology, pathology, pharmacology, and neuroscience, as defined by the Texas Higher Education Coordinating Board, the Liaison Council on Medical Education, and/or the American Osteopathic Association Bureau of Professional Education.

(D) The fundamental clinical subjects, which shall be offered in the form of required patient-related clerkships, are internal medicine, obstetrics and gynecology, pediatrics, psychiatry, family practice, and surgery, as defined by the Texas Higher Education Coordinating Board, the Liaison Council on Medical Education, and/or American Osteopathic Association Bureau of Professional Education.

(E) The curriculum shall be of at least 130 weeks in duration.

(F) There must be integrated institutional responsibility for the overall design, management and evaluation of a coherent and coordinated curriculum.

(G) For schools that have geographically separated programs, the principal academic officer of each geographically remote site must coordinate the curriculum with an academic officer of the medical school responsible for organizing the educational program.

(13) ~~[(44)]~~ Texas Medical Jurisprudence Examination (JP exam): the ethics examination developed by the board for licensure that must be passed by an applicant for licensure within three attempts with a score 75 or better.

(14) ~~[(45)]~~ Three-year training program--three continuous years of postgraduate training in the United States or Canada, progressive in nature and acceptable for specialty board certification in one specialty area that is:

(A) accredited by one of the following:

(i) the Accreditation Council for Graduate Medical Education;

(ii) the American Osteopathic Association;

(iii) the Committee on Accreditation of Preregistration Physician Training Programs, Federation of Provincial Medical Licensing Authorities of Canada;

(iv) the Royal College of Physicians and Surgeons of Canada;

(v) the College of Family Physicians of Canada; or

(vi) all programs approved by the board after August 25, 1984; or

(B) a board-approved program for which a Faculty Temporary Permit was issued; or

(C) a postresidency program, usually called a fellowship, for additional training in a medical specialty or subspecialty, approved by the board [Texas State Board of Medical Examiners].

[(b) The following words and terms, (concerning Telemedicine/Practice Across State Line/Practice of Medicine Definitions) when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:]

[(1) Act that is part of patient care service--Any diagnosis, assessment, or treatment including the taking of diagnostic imaging studies as well as the preparation of pathological material for examination.]-]

[(2) Episodic consultation--Consultation on an irregular or infrequent basis involving no more than 24 patients of a physician's diagnostic or therapeutic practice per calendar year. Multiple consultations may be performed for one or more patients up to 24 patients per calendar year.]-]

[(3) Informal consultation--Consultation performed outside the context of a contractual relationship and on an irregular or infrequent basis without the expectation of or exchange of direct or indirect compensation.]-]

[(4) Patient care service initiated in this state--Any act constituting the practice of medicine as defined in this chapter in which the patient is physically located in Texas at the time of diagnosis, treatment, or testing.]-]

[(5) Person--An individual unless otherwise expressly made applicable to a partnership, association, or corporation.]-]

[(6) Practice of medicine--A person shall be considered to be practicing medicine under any of the following circumstances listed in subparagraphs (A) - (D) of this paragraph. This definition does not negate the responsibility of applicants to demonstrate engagement in the active practice of medicine as set forth in section 163.11 of this title (relating to Active Practice of Medicine).]-]

[(A) the person publicly professes to be a physician or surgeon and diagnoses, treats, or offers to treat any mental or physical disease or disorder, or any physical deformity or injury by any system or method or to effect cures thereof;]-]

[(B) the person diagnoses, treats or offers to treat any mental or physical disease or disorder, or any physical deformity or injury by any system or method and to effect cures thereof and charges therefor, directly or indirectly, money or other compensation;]-]

[(C) the person exercises medical judgment, renders an opinion, or gives advice concerning the diagnosis or treatment of a patient, or makes any determination regarding the appropriate or necessary medical response to a particular patient's medical condition that affects the medical care of the patient; or]-]

[(D) the person is physically located in another jurisdiction, other than the state of Texas, and through any medium performs an act that is part of patient care service initiated in this state that would affect the diagnosis or treatment of the patient.]-]

[(7) State--Any state, territory, or insular possession of the United States and the District of Columbia.]-]

*§163.2. Full Texas Medical License [Licensure for United States/Canadian Medical School Graduates].*

(a) United States/Canadian Medical School Graduates. To be eligible for full licensure, an applicant who is a graduate from a school in the United States or Canada must:

(1) be 21 years of age;

(2) be of good professional character as defined under §163.1(10) of this title;

(3) have completed 60 semester hours of college courses as defined under §163.1(12) of this title;

(4) be a graduate of an acceptable approved medical school as defined under §163.1(2) of this title;

(5) have successfully completed a one-year training program of graduate medical training in the United States or Canada as defined under §163.1(11) of this title;

(6) submit evidence of passing an examination accepted by the board for licensure as defined under §163.1(9) of this title; and,

(7) pass the Texas Medical Jurisprudence Examination with a score of 75 or better within three attempts.

(b) Graduates of Acceptable Unapproved Medical Schools. To be eligible for full licensure, an applicant who is a graduate from a school outside the United States or Canada must:

(1) be 21 years of age;

(2) be of good professional character as defined under §163.1(10) of this title;

(3) have completed 60 semester hours of college courses as defined under §163.1(12) of this title;

(4) be a graduate of an acceptable unapproved medical school as defined under §163.1(2) of this title;

(5) have successfully completed a three-year training program of graduate medical training in the United States or Canada as defined under §163.1(15) of this title;

(6) submit evidence of passing an examination accepted by the board for licensure as defined under §163.1(9) of this title;

(7) pass the Texas Medical Jurisprudence Examination with a score of 75 or better within three attempts;

(8) be eligible for licensure in country of graduation as defined under §163.1(8) of this title;

(9) possess a valid certificate issued by the Educational Commission for Foreign Medical Graduates (ECFMG);

(10) have the ability to communicate in the English language; and

(11) have supplied all additional information that the board may require concerning the applicant's medical school.

*§163.4. Procedural Rules for Licensure Applicants.*

(a) All applicants for licensure:

(1) if appropriate, are encouraged to use the Federation Credentials Verification Service (FCVS) offered by the Federation of State Medical Boards of the United States (FSMB) to verify medical education, postgraduate training, licensure examination history, board action history and identity;

(2) whose applications have been filed with the board in excess of one year will be considered expired. Any fee previously submitted with that application shall be forfeited. Any further request

for licensure will require submission of a new application and inclusion of the current licensure fee;

(3) who in any way submit a false or misleading statement, document, or certificate in an application may be required to appear before the board. It will be at the discretion of the board whether or not the applicant will be issued a Texas license;

(4) on whom adverse information is received by the board may be required to appear before the board. It will be at the discretion of the board whether or not the applicant will be issued a Texas license;

(5) shall be required to comply with the board's rules and regulations which are in effect at the time the application form and fee are filed with the board;

(6) may be required to sit for additional oral, written, mental or physical examinations that, in the opinion of the board, are necessary to determine competency and ability of the applicant;

(7) must have the application for licensure complete in every detail 20 days prior to the board meeting in which they are considered for licensure. Applicants with complete applications may qualify for a Temporary License prior to being considered by the board for licensure, as required by §163.7 of this title (relating to Temporary Licensure - Regular); and

(8) that receive any medical or osteopathic medical education in the United States must have obtained such education while enrolled as a full-time or visiting student at a medical school that is accredited by an accrediting body officially recognized by the United States Department of Education as the accrediting body for medical education leading to the doctor of medicine degree or the doctor of osteopathy degree in the United States. This subsection does not apply to postgraduate medical education or training. An applicant who is unable to comply with this requirement must demonstrate that the applicant either:

(A) received such medical education in a hospital or teaching institution sponsoring or participating in a program of graduate medical education accredited by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, or the board [Texas State Board of Medical Examiners] in the same subject as the medical or osteopathic medical education if the hospital or teaching institution has an agreement with the applicant's school; or

(B) is specialty board certified by a board approved by the Bureau of Osteopathic Specialists or the American Board of Medical Specialties.

(b) Applicants for a license must subscribe to an oath in writing. The written oath is part of the application.

(c) An applicant is not eligible for a license if:

(1) the applicant holds a medical license that is currently restricted for cause, canceled for cause, suspended for cause, or revoked by a state of the United States, a province of Canada, or a uniformed service of the United States;

(2) an investigation or a proceeding is instituted against the applicant for the restriction, cancellation, suspension, or revocation of the applicant's medical license in a state of the United States, a province of Canada, or a uniformed service of the United States; or

(3) a prosecution is pending against the applicant in any state, federal, or Canadian court for any offense that under the laws of this state is a felony or a misdemeanor that involves moral turpitude.

§163.5. *Licensure Documentation.*

(a) An applicant must appear for a personal interview at the board offices and present original documents to a representative of the board for inspection. Original documents may include, but are not limited to, those listed in subsections (b) - (e) of this section.

(b) Documentation required of all applicants for licensure.

(1) Birth Certificate/Proof of Age. Each applicant for licensure must provide a copy of a valid passport or birth certificate and translation if necessary to prove that the applicant is at least 21 years of age. In instances where such documentation is not available, the applicant must provide copies of other suitable alternate documentation.

(2) Name Change. Any applicant who submits documentation showing a name other than the name under which the applicant has applied must present copies of marriage licenses, divorce decrees, or court orders stating the name change. In cases where the applicant's name has been changed by naturalization, the applicant should send the original naturalization certificate by certified mail to the board office for inspection.

(3) Examination Scores. Each applicant for licensure must have a certified transcript of grades submitted directly from the appropriate testing service to the board for all examinations accepted by the board for licensure.

(4) Dean's Certification. Each applicant for licensure must have a certificate of graduation submitted directly from the medical school on a form provided to the applicant by the board. The applicant shall attach a recent photograph, meeting United States Government passport standards, to the form before submitting to the medical school. The school shall have the Dean of the medical school or designated appointee sign the form attesting to the information on the form and placing the school seal over the photograph.

(5) Evaluations. All applicants must provide evaluations completed by an appropriate supervisor, on a form provided by the board, of their professional affiliations for the past ten years or since graduation from medical school, whichever is the shorter period.

(6) Medical School Transcript. Each applicant must have his or her medical school submit a transcript of courses taken and grades obtained.

(7) National Practitioner Data Bank/Health Integrity and Protection Data Bank (NPDB-HIPDB). Each applicant must contact the NPDB-HIPDB and have a report of action submitted directly to the board on the applicant's behalf.

(8) Graduate Training Verification. Each applicant must have each of the training programs in which they have participated in submit verification on a form provided by the board. The evaluation must show the beginning and ending dates of the program and state that the program was successfully completed.

(9) Specialty Board Certification. Each applicant who has obtained certification by a board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists must submit a copy of the certificate issued by the member showing board certification.

(10) Medical License Verifications. Each applicant must have every state in which he or she has ever been licensed, regardless of the current status of the license, submit directly to this board a letter verifying the status of the license and a description of any sanctions or pending disciplinary matters.

(11) U.S. medical education. Applicants must demonstrate that any medical school education that was completed in the United States in satisfaction of their core basic and clinical science courses as

established by the Texas Higher Education Coordinating Board, the Liaison Council on Medical Education, and/or the American Osteopathic Association, and in satisfaction of the 130 weeks of required medical education was accredited by an accrediting body officially recognized by the United States Department of Education as the accrediting body for medical education leading to the doctor of medicine degree or the doctor of osteopathy degree. An applicant who is unable to comply with these requirements may in the alternative demonstrate that the applicant:

(A) received such medical education in a hospital or teaching institution sponsoring or participating in a program of graduate medical education accredited by the Accrediting Council for Graduate Medical Education, the American Osteopathic Association, or approved by the board [Texas State Board of Medical Examiners] under Section 171.4 of this title (relating to Board-Approved Postgraduate Fellowship Training Programs) in the same subject as the medical or osteopathic medical education if the hospital or teaching institution has an agreement with the applicant's school; or

(B) is specialty board certified by a board approved by the Bureau of Osteopathic Specialists or the American Board of Medical Specialties.

(c) Applicants for licensure who are graduates of medical schools outside the United States or Canada must furnish all appropriate documentation listed in this subsection, as well as that listed in subsections (a) and (b) of this section.

(1) Educational Commission for Foreign Medical Graduates (ECFMG) Status Report. Each applicant must submit an ECFMG status report.

(2) Unique Documentation. The board may request documentation unique to an individual unapproved medical school and additional documentation as needed to verify completion of medical education that is substantially equivalent to a Texas medical school education. This may include but is not limited to:

- (A) a copy of the applicant's ECFMG file;
- (B) a copy of other states' licensing files;
- (C) copies of the applicant's clinical clerkship evaluations; and
- (D) a copy of the applicant's medical school file.

(3) Certificate of Registration. Each applicant must provide a copy of his or her certificate to practice in the country in which his or her medical school is located. If a certificate is unavailable, a letter submitted directly to this board from the body governing licensure of physicians in the country in which the school is located, will be accepted. The letter must state that the applicant has met all the requirements for licensure in the country in which the school is located. If an applicant is not licensed in the country of graduation due to a citizenship requirement, a letter attesting to this, submitted directly to this board, will be required.

(4) Clinical Clerkship Affidavit. A form, supplied by the board, to be completed by the applicant, is required listing each clinical clerkship that was completed as part of an applicant's medical education. The form will require the name of the clerkship, where the clerkship was located (name and location of hospital) and dates of the clerkship.

(5) "Substantially equivalent" documentation. An applicant who is a graduate of a medical school that is located outside the United States and Canada must present satisfactory proof to the board that each medical school attended was substantially equivalent

to a Texas medical school at the time of attendance as defined under §163.1(13) of this title. This may include but is not limited to:

(A) a Foreign Educational Credentials Evaluation from the Office of International Education Services of the American Association of Collegiate Registrars and Admissions Officers (AACRAO);

(B) a board questionnaire, to be completed by the medical school and returned directly to board;

(C) a copy of the medical school's catalog;

(D) verification from the country's educational agency confirming the validity of school and licensure of applicant;

(E) proof of written agreements between the medical school and all hospitals that are not located in the same country as the medical school, where medical education was obtained;

(F) proof that the faculty members of the medical school had written contracts with the school if they taught a course outside the country where the medical school was located;

(G) proof that the medical education courses taught in the United States complied with the higher education laws of the state in which the courses were taught;

(H) proof that the faculty members of the medical school who taught courses in the United States were on the faculty of the program of graduate medical education when the courses were taught; and

(I) proof that all education completed in the United States or Canada was while the applicant was enrolled as a visiting student as evidenced by a letter of verification from the U.S. or Canadian medical school.

(6) Medical Diploma. Each applicant must submit a copy of his or her medical diploma, and translation if necessary.

(d) Applicants may be required to submit other documentation, which may include the following:

(1) Translations. Any document that is in a language other than the English language will need to have a certified translation prepared and a copy of the translation will have to be submitted along with the translated document.

(A) An official translation from the medical school (or appropriate agency) attached to the foreign language transcript or other document is acceptable.

(B) If a foreign document is received without a translation, the board will send the applicant a copy of the document to be translated and returned to the board.

(C) Documents must be translated by a translation agency that is a member of the American Translations Association or a United States college or university official.

(D) The translation must be on the translator's letterhead, and the translator must verify that it is a "true word for word translation" to the best of his/her knowledge, and that he/she is fluent in the language translated, and is qualified to translate the document.

(E) The translation must be signed in the presence of a notary public and then notarized. The translator's name must be printed below his/her signature. The notary public must use this phrase: "Subscribed and Sworn to this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_." The notary must then sign and date the translation, and affix his/her Notary Seal to the document.

(2) **Arrest Records.** If an applicant has ever been arrested, a copy of the arrest and arrest disposition need to be requested from the arresting authority and said authority must submit copies directly to this board.

(3) **Malpractice.** If an applicant has ever been named in a malpractice claim filed with any medical liability carrier or if an applicant has ever been named in a malpractice suit, the applicant must do the following:

(A) have each medical liability carrier complete a form furnished by the board regarding each claim filed against the applicant's insurance;

(B) for each claim that becomes a malpractice suit, have the attorney representing the applicant in each suit submit a letter directly to the board explaining the allegation, dates of the allegation, and current status of the suit. If the suit has been closed, the attorney must state the disposition of the suit, and if any money was paid, the amount of the settlement. The letter should include supporting court records. If such letter is not available, the applicant will be required to furnish a notarized affidavit explaining why this letter cannot be provided; and

(C) provide a statement, composed by the applicant, explaining the circumstances pertaining to patient care in defense of the allegations.

(4) **Inpatient Treatment for Alcohol/Substance Abuse or Mental Illness.** Each applicant who has been admitted to an inpatient facility within the last five years for the treatment of alcohol/substance abuse or mental illness (recurrent or severe major depressive disorder, bipolar disorder, schizophrenia, schizoaffective disorder, or any severe personality disorder), or physical illness shall submit documentation to include, but not limited to:

(A) an applicant's statement explaining the circumstances of the hospitalization;

(B) all records, submitted directly from the inpatient facility;

(C) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(D) a copy of any contracts signed with any licensing authority or medical society or impaired physician's committee.

(5) **Outpatient Treatment for Alcohol/Substance Abuse or Mental Illness.** Each applicant who has been treated on an outpatient basis within the last five years for alcohol/substance abuse or mental illness (recurrent or severe major depressive disorder, bipolar disorder, schizophrenia, schizoaffective disorder, or any severe personality disorder), or physical illness shall submit documentation to include, but not limited to:

(A) an applicant's statement explaining the circumstances of the outpatient treatment;

(B) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(C) a copy of any contracts signed with any licensing authority or medical society or impaired physician's committee.

(6) **DD214.** A copy of the DD214, indicating separation from any branch of the United States military.

(7) **Premedical School Transcript.** Applicants, upon request, may be required to submit a copy of the record of their undergraduate education. Transcripts must show courses taken and

grades obtained. If determined that the documentation submitted by the applicant is not sufficient to show proof of the completion of 60 semester hours of college courses other than in medical school or education required for country of graduation, the applicant may be requested to contact the Office of Admissions at The University of Texas at Austin for course work verification.

(8) **Fingerprint Card.** Upon request, applicants must complete a fingerprint card and return to the board as part of the application.

(9) **Additional Documentation.** Additional documentation as is deemed necessary to facilitate the investigation of any application for medical licensure.

(e) The board may, in unusual circumstances, allow substitute documents where proof of exhaustive efforts on the applicant's part to secure the required documents is presented. These exceptions are reviewed by the board's executive director on a case-by-case basis.

*§163.6. Examinations Accepted for Licensure.*

(a) **Licensing Examinations Accepted by the Board for Licensure.** The following examinations are acceptable for licensure:

(1) United States Medical Licensing Examination (USMLE), or its successor, with a score of 75 or better, or a passing grade if applicable, on each step [~~with all steps passed within seven years~~];

(2) COMLEX-USA, or its successor, with a score of 75 or better, or a passing grade if applicable, on each step;

(3) [~~(2)~~] Federation Licensing Examination (FLEX), on or after July 1, 1985, passage of both components [~~within seven years~~] with a score of 75 or better on each component;

(4) [~~(3)~~] Federation Licensing Examination (FLEX), before July 1, 1985, with a FLEX weighted average of 75 or better in one sitting;

(5) [~~(4)~~] National Board of Medical Examiners Examination (NBME) or its successor [~~all steps passed within seven years~~];

(6) [~~(5)~~] National Board of Osteopathic Medical Examiners Examination (NBOME) or its successor [~~with all steps passed within seven years~~];

(7) [~~(6)~~] Medical Council of Canada Examination (LMCC) or its successor [~~with all steps passed within seven years~~];

(8) [~~(7)~~] State board licensing examination, passed before January 1, 1977, (with the exception of Virgin Islands, Guam, Tennessee Osteopathic Board or Puerto Rico then the exams must be passed before July 1, 1963); or

(9) [~~(8)~~] One of the following examination combinations with a score of 75 or better on each part, level, component, or step [~~all parts, levels, components, or steps must be passed within seven years~~];

(A) FLEX I plus USMLE 3;

(B) USMLE 1 and USMLE 2 (including passage of the clinical skills component if applicable), plus FLEX II;

(C) NBME I or USMLE 1, plus NBME II or USMLE 2 (including passage of the clinical skills component if applicable), plus NBME III or USMLE 3;

(D) NBME I or USMLE 1, plus NBME II or USMLE 2 (including passage of the clinical skills component if applicable), plus FLEX II;

(E) [~~NBOME I, plus NBOME II, plus FLEX II;~~]

[(F)] The NBOME Part I or COMLEX Level I and NBOME Part II or COMLEX Level II and NBOME Part III or COMLEX Level III.

(b) Three-Attempt Limit. An applicant must pass each part of an examination listed in subsection (a) of this section within three attempts. An applicant who attempts more than one type of examination must pass each part of at least one examination and shall not be allowed to combine parts of different types of examination. Attempts at a comparable part of a different type of examination shall be counted against the three-attempt limit [; except that an applicant who has passed all but one part of an examination within three attempts may take the remaining part of the examination one additional time].

(c) Limit on Time to Complete Examination.

(1) An applicant must pass all parts of an examination listed in subsections (a)(1), (a)(2), (a)(4), (a)(5), or (a)(6) of this section within seven years; or,

(2) If the applicant is a graduate of a program designed to lead to both a doctor of philosophy degree and a doctor of medicine degree or doctor of osteopathy degree, the applicant may qualify by passing each part of an examination listed in subsections (a)(1), (a)(2), (a)(4), (a)(5), or (a)(6) of this section not later than the second anniversary of the date the applicant completed the required graduate medical training.

(d) The time frame to pass each part of the examination described by subsection (c)(1) of this section is extended to 10 years and the anniversary date to pass each part of the examination described by subsection (c)(2) of this section is extended to the 10th anniversary if the applicant:

(1) is specialty board certified by a specialty board that:

(A) is a member of the American Board of Medical Specialties; or

(B) is a member of the Bureau of Osteopathic Specialists; or

(2) has been issued a faculty temporary license, as prescribed by board rule, and has practiced under such a license for a minimum of 12 months and, at the conclusion of the 12-month period, has been recommended to the board by the chief administrative officer and the president of the institution in which the applicant practiced under the faculty temporary license.

[(e) Notwithstanding subsection (e) of this section, an applicant is considered to have satisfied the requirements of this section if the applicant:]

[(1) passed all but one part of an examination approved by the board within three attempts and passed the remaining part of the examination within five attempts;

[(2) is specialty board certified by a specialty board that:]

[(A) is a member of the American Board of Medical Specialties; or

[(B) is a member of the Bureau of Osteopathic Specialists; and

[(C) completed in this state an additional two years of postgraduate medical training approved by the board.]

(e) [(d)] An applicant who has not passed an examination listed in subsection (a) for licensure within the [in a] ten-year period prior to the filing date of the application must:

(1) pass a monitored specialty certification examination or formal evaluation, a monitored recertification examination or formal evaluation, or a monitored examination of continued demonstration of qualifications by a board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists within the preceding ten years;

(2) obtain through extraordinary circumstances, unique training equal to the training required for specialty certification as determined by a committee of the board and approved by the board, including but not limited to participation for at least six months in a training program approved by the board within twelve months prior to the application for licensure; or

(3) pass the Special Purpose Examination (SPEX) within the preceding ten years.

[(4) For those applicants who do not pass all parts of all examinations required for licensure within a seven-year period, the board may consider for licensure graduates of simultaneous MD-PhD or DO-PhD programs who have passed all parts of their required examinations no later than two years after their MD or DO degree was awarded.]

(f) [(e)] JP Exam.

(1) In addition to the licensing examinations required for licensure under subsection (a) of this section, applicants must pass the JP exam with a score of 75 or better within three attempts.

(2) An examinee shall not be permitted to bring medical books, compends, notes, medical journals, calculators or other help into the examination room, nor be allowed to communicate by word or sign with another examinee while the examination is in progress without permission of the presiding examiner, nor be allowed to leave the examination room except when so permitted by the presiding examiner.

(3) Irregularities during an examination such as giving or obtaining unauthorized information or aid as evidenced by observation or subsequent statistical analysis of answer sheets, shall be sufficient cause to terminate an applicant's participation in an examination, invalidate the applicant's examination results, or take other appropriate action.

(4) An applicant who is unable to pass the JP exam within three attempts must appear before a committee of the board to address the applicant's inability to pass the examination and to re-evaluate the applicant's eligibility for licensure. It is at the discretion of the committee to allow an applicant additional attempts to take the JP exam.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

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For further information, please call: (512) 305-7016



**22 TAC §§163.3, 163.7, 163.14**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of*

the Texas Medical Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The following statutes, articles or codes are affected by this proposal: Section 163.3--none; Section 163.7--155.104(a), Texas Occupations Code, Section 163.14--§153.004, Texas Occupations Code.

§163.3. *Licensure for Graduates of Acceptable Unapproved Medical Schools.*

§163.7. *Temporary Licensure - Regular.*

§163.14. *Licensure to Practice Medicine Across State Lines.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## CHAPTER 172. TEMPORARY AND LIMITED LICENSES

The Texas Medical Board proposes amendments to §§172.1, 172.2, 172.5, 172.8 and new §§172.11 - 172.13, concerning Temporary and Limited Licenses.

The amendments to §172.1 add limited licenses to the purpose of Chapter 172. The amendments to §172.2 add limited licenses to definitions and move definitions regarding Telemedicine from §163.1(b). The amendments to §172.5 changes the name of Visiting Physician Temporary "License" to "Permit" to comply with previous amendments to §163.15. The amendments to §172.8 revises the rule to conform to the requirements of SB 419. New §172.11 moves previous §163.7 to Chapter 172 to reorganize licensure rules. New §172.12 moves former §163.14 to Chapter 172 for better organization. New §172.13 provides provisions of eligibility for the license, issuance and renewal of the license, continuing education requirements, and scope of the practice of a person who holds the license, as required by SB 419.

Michele Shackelford, General Counsel, Texas Medical Board, has determined that for the first five-year period the amendments and new sections are in effect there will be no fiscal implications to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the sections as proposed.

Ms. Shackelford also has determined that for each year of the first five years the amendments and new rules are in effect the public benefit anticipated as a result of enforcing the sections will

be to reorganize licensing rules to put all temporary and limited license provision in Chapter 172 for improvement and better organization of licensure rules, updates rules in accordance with statutory amendments and provides a new license for Administrative Medicine for physicians who do not wish to practice clinical medicine, prescribe for or treat patients, or determine medical necessity of health care services or products. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

## SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

### 22 TAC §172.1, §172.2

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The following statutes, articles or codes are affected by this proposal: Section 172.1--none; Section 172.2--§153.004, Texas Occupations Code.

§172.1. *Purpose.*

Pursuant to [Tex. Occ. Code Section 155.104 of] the Medical Practice Act, [that authorizes] the Board is authorized to adopt rules relating to granting temporary and limited licenses. This [; this] chapter is promulgated to provide criteria for the eligibility and discipline of physicians who apply for and are granted temporary and limited licenses.

§172.2. *Construction and Definitions.*

(a) Unless otherwise indicated, temporary license holders under this chapter shall be subject to the duties, limitations, disciplinary actions, rehabilitation order provisions, and procedures applicable to licensees in the Medical Practice Act and board rules. Temporary license holders under this chapter shall also be subject to the limitations and restrictions elaborated in this chapter.

(b) Temporary and limited license holders under this chapter shall cooperate with the board and board staff involved in investigation, review, or monitoring associated with the [temporary] license holder's practice of medicine. Such cooperation shall include, but not be limited to, [temporary license holder's] written response to the board or board staff written inquiry within 14 days of receipt of such inquiry.

(c) In accordance with [~~§155.105 of~~] the Medical Practice Act, the board shall retain jurisdiction to discipline a temporary or limited license holder whose license [~~permit~~] has been terminated, canceled, and/or expired if the [temporary] license holder violated the Medical Practice Act or board rules during the time the [temporary] license was valid.

(d) The issuance of a temporary or limited license [~~to a physician~~] shall not be construed to obligate the board to issue [~~the physician~~] subsequent permits or licenses. The board reserves the right to investigate, deny a permit, temporary or limited license, or full licensure, and/or discipline a physician regardless of when the information was received by the board.

(e) Nothing in this chapter shall be construed to prevent the board from issuing temporary or limited licenses to those physicians awaiting full licensure pursuant to Section 163.7 of this title (relating

to Temporary Licensure - Regular) or to those licensees who qualify for CME temporary licenses pursuant to Section 166.2(k) of this title (relating to CME temporary licenses).

(f) In addition to other definitions that may apply to licensure, the following words and terms, when used in this chapter shall have the following meanings unless the context clearly indicates otherwise.

(1) Act that is part of patient care service--Any diagnosis, assessment, or treatment including the taking of diagnostic imaging studies as well as the preparation of pathological material for examination.

(2) Episodic consultation--Consultation on an irregular or infrequent basis involving no more than 24 patients of a physician's diagnostic or therapeutic practice per calendar year. Multiple consultations may be performed for one or more patients up to 24 patients per calendar year.

(3) Informal consultation--Consultation performed outside the context of a contractual relationship and on an irregular or infrequent basis without the expectation of or exchange of direct or indirect compensation.

(4) Patient care service initiated in this state--Any act constituting the practice of medicine as defined in this chapter in which the patient is physically located in Texas at the time of diagnosis, treatment, or testing.

(5) Person--An individual unless otherwise expressly made applicable to a partnership, association, or corporation.

(6) Practice of medicine--A person shall be considered to be practicing medicine under any of the following circumstances listed in subparagraphs (A) - (D) of this paragraph. This definition does not negate the responsibility of applicants to demonstrate engagement in the active practice of medicine as set forth in Section 163.11 of this title (relating to Active Practice of Medicine).

(A) the person publicly professes to be a physician or surgeon and diagnoses, treats, or offers to treat any mental or physical disease or disorder, or any physical deformity or injury by any system or method or to effect cures thereof;

(B) the person diagnoses, treats or offers to treat any mental or physical disease or disorder, or any physical deformity or injury by any system or method and to effect cures thereof and charges therefor, directly or indirectly, money or other compensation;

(C) the person exercises medical judgment, renders an opinion, or gives advice concerning the diagnosis or treatment of a patient, or makes any determination regarding the appropriate or necessary medical response to a particular patient's medical condition that affects the medical care of the patient; or

(D) the person is physically located in another jurisdiction, other than the state of Texas, and through any medium performs an act that is part of patient care service initiated in this state that would affect the diagnosis or treatment of the patient.

(7) State--Any state, territory, or insular possession of the United States and the District of Columbia.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER B. TEMPORARY LICENSES

### 22 TAC §§172.5, 172.8, 172.11

The amendments and new rule are proposed under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The following statutes, articles or codes are affected by this proposal: Section 172.5--none; Section 172.8--§155.104, Texas Occupations Code, Section 172.11--§155.104(a), Texas Occupations Code.

#### *§172.5. Visiting Physician Temporary Permit [License].*

(a) The executive director of the board may issue a permit to practice medicine to an applicant who intends to practice under the supervision of a licensed Texas physician, excluding training in postgraduate training programs, for educational purposes or in order to practice charity care to underserved populations in Texas. In order to be determined eligible for a visiting physician permit the applicant must:

(1) hold a current medical license that is free of any restriction, disciplinary order or probation in another state, territory, or Canadian province;

(2) not have any medical license that is under restriction, disciplinary order, or probation in another state, territory, or Canadian province;

(3) be supervised by a physician with an unrestricted license in Texas;

(4) present written verification from the physician who will be supervising the applicant that the physician will provide continuous supervision of the applicant. Constant physical presence of the physician is not required but the physician must remain readily available; and

(5) present written verification from the supervising physician as to the purpose for the requested permit.

(b) Visiting physician permits shall be valid for no more than ten working days and for a specified locale and purpose. The executive director of the board, in his/her discretion, may extend the length of the state if the applicant shows good cause for why the extended time is needed [need].

#### *§172.8. Faculty Temporary License.*

(a) The board may issue a faculty temporary license to practice medicine to a physician [appointed by a Texas medical school or institution] in accordance with Section 155.104, Tex. Occ. Code. "Physician," as used in that statute and in this section, is interpreted to mean a person who holds an M.D., D.O., or equivalent degree and who is licensed to practice medicine in another state or Canadian province or has completed at least three years of postgraduate residency, but does not hold a license to practice medicine in this state. [this section:]

{(1) The physician must hold a current medical license that is free of any restriction, disciplinary order or probation in another state,



territory, or Canadian province; or have completed three years of postgraduate residency training.]

(1) [(2)] Each medical license held in any [another] state, territory, or Canadian province must be free of any restrictions, disciplinary order or probation.

(2) [(3)] The physician must [not] have passed the Texas medical jurisprudence examination within three attempts, with a score of 75 or better. [failed a licensure examination that would prevent the physician from obtaining an unrestricted physician license in Texas.]

(3) [(4)] "Institution," as used in this section, shall mean any of the following [The physician must hold a salaried faculty position of assistant professor-level or higher working full-time in one of the following institutions]:

- (A) University of Texas Medical Branch at Galveston;
- (B) University of Texas Southwestern Medical Center at Dallas;
- (C) University of Texas Health Science Center at Houston;
- (D) University of Texas Health Science Center at San Antonio;
- (E) University of Texas Health Center at Tyler;
- (F) University of Texas M.D. Anderson Cancer Center;
- (G) Texas A&M University College of Medicine;
- (H) Texas Tech University School of Medicine;
- (I) Baylor College of Medicine; or
- (J) University of North Texas Health Science Center at Fort Worth.

(4) The physician must:

(A) hold a salaried faculty position of assistant professor-level or higher working full-time in one of the institutions; or

(B) [(5) Notwithstanding paragraph (4) of this subsection, a physician is eligible for a faculty temporary license permit if the physician holds] hold a faculty position of assistant professor-level or higher, work [and works] at least part-time in one of the institutions [named in paragraph (4) of this subsection] and;

(i) [(A)] be [the physician is] on active duty in the United States military; and,

(ii) [(B)] be engaged in a [the physician's] practice under the faculty temporary license that will fulfill a critical need of the citizens of Texas.

(5) [(6)] The physician must sign an oath on a form provided by the board swearing that the physician [applicant] has read and is familiar with board rules and the Medical Practice Act; will abide by board rules and the Medical Practice Act in activities permitted by this section [chapter]; and will subject themselves to the disciplinary procedures of the board [Texas State Board of Medical Examiners].

(b) The faculty temporary license shall be issued for a period of one year; and may, in the discretion of the executive director of the board, be renewed three times]. The holder of a faculty temporary license may apply for one or more successive faculty temporary licenses.

(c) The faculty temporary license holder's practice of medicine shall be limited to the teaching confines of the applying medical school as a part of duties and responsibilities assigned by the school to the physician.

(d) The physician may participate in the full activities of the department of any hospital for which the physician's medical school [in whichever hospitals the appointee's department] has full responsibility for clinical, patient care, and teaching activities. "Full responsibility" means that the medical school has agreed to provide physicians to see patients in the hospital and that the medical school provides any necessary supervision for such physicians.

(e) The physician and the school shall file affidavits with the board affirming acceptance of the terms, limitations, and conditions imposed by the board on the medical activities of the physician.

(f) The application and fee for the faculty temporary license [or the renewal thereof] shall be presented to the executive director of the board at least 30 days prior to the effective date of the appointment of the physician.

(g) The application shall be made by the chairman of the department in which the physician will teach and provide such information and documentation to the board as may be requested.

(h) The application shall be endorsed by the dean of the medical school or by the president of the institution. An endorsement must include a statement that the medical school or institution has investigated and determined the physician to be of good professional character and fit to practice medicine. An endorsement shall also state that the medical school or institution has accepted the responsibility to properly supervise the medical activities of the physician.

(i) Three years in a teaching faculty position at any institution listed in subsection (a)(3)[(4)] of this section may be equivalent to three years of approved postgraduate training if, at the conclusion of this three-year period, the physician presents recommendations in his or her behalf from the chief administrative officer and the president of the institution. A recommendation must include verification that the physician has completed at least three years in a teaching faculty position at the level of assistant professor or higher and that the duties of the physician in such position required activities that demonstrate that the physician's medical competence is substantially equivalent to the competence of a person who has completed three years of an approved postgraduate residency program as described in Section 171.3(a)(1) of this title (relating to Physician-in-Training Permits).

#### §172.11. Temporary Licensure--Regular.

(a) The executive director of the board may issue a temporary license to an applicant:

(1) who has passed the Texas medical jurisprudence examination;

(2) whose completed application has been filed, processed, and found to be in order; and

(3) who has met all other requirements for licensure.

(b) Each applicant shall receive only one temporary license prior to the issuance of a permanent license. The board, in unusual circumstances, may allow the issuance of one additional temporary license if it finds it is in the best interest of the public health and welfare. These exceptions are reviewed by the executive director on a case-by-case basis.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER C. LIMITED LICENSES

### 22 TAC §172.12, §172.13

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The following statutes, articles or codes are affected by this proposal: Section 172.12--§151.056, Texas Occupations Code; Section 172.13--§155.009, Texas Occupations Code.

#### §172.12. Telemedicine License.

(a) Qualifications. A person may not engage in the practice of medicine across state lines in this State, hold oneself as qualified to do the same, or use any title, word, or abbreviation to indicate or induce others to believe that one is licensed to practice across state lines in this state unless the person is actually so licensed. For a person to be eligible for a special purpose telemedicine license to practice medicine across state lines under the Medical Practice Act, §151.056, and §163.1 of this title (relating to Definitions), the person must:

- (1) be 21 years of age or older;
- (2) be actively licensed to practice medicine in another state which is recognized by the board for purposes of licensure, and not the recipient of a previous disciplinary action by any other state or jurisdiction;
- (3) not be the subject of a pending investigation by a state medical board or another state or federal agency;
- (4) be certified in a medical specialty pursuant to the standards of and approved by the American Board of Medical Specialties or the Bureau of Osteopathic Specialists and Boards of Certification;
- (5) have passed the Texas Medical Jurisprudence Examination;
- (6) complete a board-approved application for a special purpose telemedicine license for the practice of medicine across state lines and submit the requisite initial fee; and
- (7) not be determined ineligible for licensure under subsection (b) of this section.

(b) Denial of Special Purpose Telemedicine License. An application for a special purpose telemedicine license to practice medicine across state lines may be denied based on failure to demonstrate the requisite qualifications for issuance of a special purpose license, any grounds for denial of an application for a full license, failure to submit the required fee, and any grounds for disciplinary action of a licensee under the Medical Practice Act, §164.051 (relating to Grounds for Denial or Disciplinary Action).

(c) Limits on Special Purpose Telemedicine License. A special purpose telemedicine license to practice medicine across state lines shall be limited exclusively to the practice of medicine as defined by Section 163.1 of this title and limited to the specialty or specialization upon which the license was granted under subsection (a)(3) of this sec-

tion, and the license holder shall practice medicine in a manner so as to comply with all other statutes and laws governing the practice of medicine in the state of Texas. Unless a person holds a current full license to practice medicine in this state pursuant to this chapter and the provisions of the Medical Practice Act, Chapter 155 (relating to License to Practice Medicine), a person holding a special purpose telemedicine license shall not be authorized to physically practice medicine in the state of Texas.

(d) Registration Requirements. All special purpose telemedicine licenses to practice medicine across state lines licenses must be renewed and maintained according to registration requirements of Section 166.1 of this title (relating to Physician Registration).

(e) Disciplinary Action. The issuance by the board of a special purpose telemedicine license subjects the licensee to the jurisdiction of the board in all matters set forth in the Medical Practice Act and all rules and regulations, including all matters related to discipline.

(f) Exemptions. The following activities shall be exempt from the requirements of a special purpose telemedicine license and this chapter:

- (1) episodic consultation by a medical specialist located in another jurisdiction who provides such consultation services on request to a person licensed in this state;
- (2) consultation services provided by a physician located in another jurisdiction to a medical school as defined in the Education Code, §61.501;
- (3) consultation services provided by a physician located in another jurisdiction to an institution defined in either Subchapter C, Chapter 73, or Subchapter K, Chapter 74 of the Education Code;
- (4) informal consultation performed outside the context of a contractual relationship and on an irregular or infrequent basis without the expectation or exchange of direct or indirect compensation;
- (5) furnishing of medical assistance in case of an emergency or disaster if no charge is made for the medical assistance; and
- (6) a physician located in another jurisdiction of a state having borders contiguous with the borders of this state who is the treating physician of a patient and orders home health or hospice services for a resident of this state to be delivered by a home and community support services agency licensed in this state.

#### §172.13. Limited License for Practice of Administrative Medicine.

(a) The board may issue a license to an applicant pursuant to the authority of Section 155.009, Tex. Occ. Code, that is limited to administrative medicine.

(b) "Administrative medicine," as used in this section, means professional managerial, administrative, or supervisory activities related to the practice of medicine or the delivery of health care services and medical research or the practice of investigative medicine.

(c) An administrative medicine license does not include the authority to diagnose or treat patients, prescribe dangerous drugs or controlled substances, delegate medical acts or prescriptive authority, or issue opinions regarding medical necessity. "Medical necessity," as used in this section, means health care services or products that a prudent physician would provide to a patient for the purpose of preventing, diagnosing, or treating an illness, injury, disease, or its symptoms in a manner that is:

- (1) in accordance with generally accepted standards of medical practice;

(2) clinically appropriate in terms of type, frequency, extent, site, and duration; and

(3) not primarily for the convenience of the patient, physician, or other health care provider.

(d) An applicant for an administrative medicine license must complete the same application and meet the same requirements as an applicant for a full Texas medical license, except that the applicant for an administrative medicine license shall not be required to show that the applicant has been engaged in the active practice of medicine, as defined in Section 163.11 of this title (relating to Active Practice of Medicine).

(e) The holder of an administrative medicine license shall be required to pay the same fees and meet all other requirements for issuance and renewal of the license as a person holding an unlimited license to practice medicine

(f) This section shall have no effect on any full Texas medical license issued prior to the effective date of this rule. The license of any physician who has agreed to a board order restricting the license to administrative medicine based on the failure to meet the licensure requirement to be engaged in the active practice of medicine, upon request of the physician, may be converted to an administrative medicine license and the board order regarding such physician shall be terminated.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

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For further information, please call: (512) 305-7016



## CHAPTER 175. FEES, PENALTIES AND APPLICATIONS

The Texas Medical Board proposes the repeal and replacement of §§175.1 - 175.4, concerning Fees, Penalties and Applications. New Chapter 175 will be entitled Fees, Penalties and Forms.

The repeal and new rules are necessary for reorganization and general update and cleanup of the chapter. The changes generally carry forward the same fees previously charged, except that: the fee for an office-based anesthesia site is eliminated, a new fee for physicians who practice office-based anesthesia is established, and a fee for inspection of an office-based anesthesia site is established; a new fee for the new Administrative Medicine License is established; certain outdated fees are eliminated; and the list of forms used for applications for licenses is updated.

Michele Shackelford, General Counsel, Texas Medical Board, has determined that for the first five-year period the repeal and replacement are in effect there will be no fiscal implications to state or local government as a result of enforcing the sections as proposed, unless a state or local government pays fees on behalf of certain health care employees, in which case it is unable to determine the total effect. The effect to individuals required to

comply with the sections as proposed: Individual physicians who practice office-based anesthesia will incur a new fee for registration for such practice. Individual physician's who previously paid an office-based anesthesia site registration fee will no longer pay such a fee; Individuals who apply for a faculty temporary license will pay an application fee.

Ms. Shackelford also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will benefit from updated rules that are reorganized for better clarity and fees that will more accurately reflect the costs to administer the programs of the agency. The effect on small or micro businesses - small businesses that previously paid an office-based anesthesia site registration fee will no longer pay such a fee.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

### 22 TAC §§175.1 - 175.4

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Medical Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeals are proposed under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The following statutes, articles or codes are affected by this proposal: §155.006, Texas Occupations Code.

*§175.1. Fees.*

*§175.2. Penalties.*

*§175.3. Payment of Fees or Penalties.*

*§175.4. Applications.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## CHAPTER 175. FEES, PENALTIES AND FORMS

### 22 TAC §§175.1 - 175.4

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The following statutes, articles or codes are affected by this proposal: §155.006, Texas Occupations Code.

§175.1. Application Fees.

The board shall charge the following fees for processing an application for a license or permit:

(1) Physician Licenses:

(A) Full physician license (includes surcharge of \$205)--\$805.

(B) Telemedicine license (includes surcharge of \$205)--\$805.

(C) Administrative medicine license (includes surcharge of \$205)--\$805.

(D) Reissuance of license following revocation (includes surcharge of \$205)--\$805.

(E) Temporary license:

(i) Distinguished professor--\$50.

(ii) State health agency--\$50.

(iii) Visiting physician--\$0-.

(iv) Visiting professor--\$110.

(v) National Health Service Corps--\$0-.

(vi) Faculty temporary license (includes surcharges of \$280)--\$680.

(vii) Postgraduate Research Temporary License--\$0-.

(viii) Medically underserved area--\$50.

(ix) Regular--\$50.

(F) Licenses and Permits relating to Medical Education:

(i) Initial physician in training permit (includes surcharge of \$4)--\$144.

(ii) Physician in training permit for program transfer (includes surcharge of \$2)--\$72.

(iii) Evaluation or re-evaluation of postgraduate training program --\$250.

(2) Physician Assistants:

(A) Physician assistant license (includes surcharge of \$5)--\$205.

(B) Reissuance of license following revocation (includes surcharge of \$5)--\$205.

(C) Temporary license--\$50.

(3) Acupuncturists/Acudetox Specialists/Continuing Education Providers:

(A) Acupuncture licensure (includes surcharge of \$5)--\$305.

(B) Temporary license for an acupuncturist--\$50.

(C) Acupuncturist distinguished professor temporary license--\$50.

(D) Acudetox specialist certification (includes surcharge of \$2)--\$52.

(E) Continuing acupuncture education provider--\$50.

(F) Review of continuing acupuncture education courses--\$50.

(G) Review of continuing acudetox acupuncture education courses--\$50.

(4) Non-Certified Radiologic Technician permit (includes surcharge of \$2)--\$52.

(5) Non-Profit Health Organization initial certification--\$2,500.

(6) Surgical Assistants:

(A) Surgical assistant licensure (includes surcharge of \$5)--\$305.

(B) Temporary license--\$50.

§175.2. Registration and Renewal Fees.

The board shall charge the following fees to continue licenses and permits in effect:

(1) Physician Registration Permits:

(A) Initial biennial permit (includes surcharges of \$496)--\$756.

(B) Subsequent biennial permit (includes surcharges of \$492)--\$752.

(C) Additional biennial registration fee for office-based anesthesia--\$200.

(D) Continuing medical education temporary license--\$55.

(2) Physician Assistant Registration Permits:

(A) Initial annual permit (includes surcharges of \$10)--\$160.

(B) Subsequent annual permit (includes surcharges of \$6)--\$156.

(3) Acupuncturists/Acudetox Specialists Registration Permits:

(A) Initial annual permit for acupuncturist (includes surcharges of \$10)--\$294.

(B) Subsequent annual permit for acupuncturist (includes surcharges of \$6)--\$290.

(C) Annual renewal for acudetox specialist certification--\$59.

(4) Non-Certified Radiologic Technician permit annual renewal (includes surcharge of \$2)--\$86.

(5) Non-Profit Health Organization biennial recertification--\$1,068.

(6) Surgical Assistants registration permits:

(A) Initial biennial permit (includes surcharges of \$6)--\$474.

(B) Subsequent biennial permit (includes surcharges of \$2)--\$470.

§175.3. Penalties.

In addition to any other application, registration, or renewal fees, the board shall charge the following late fee penalties:

(1) Physicians:

(A) Physician's registration permit expired for 31 - 90 days--\$75.

(B) Physician's registration permit expired for longer than 90 days but less than one year--\$150.

(2) Physician Assistants:

(A) Physician assistant's registration permit expired for 90 days or less--\$78.

(B) Physician assistant's registration permit expired for longer than 90 days but less than one year--\$156.

(3) Acupuncturists/Acudetox Specialists:

(A) Acupuncturist's registration permit expired for 90 days or less--\$128.

(B) Acupuncturist's registration permit expired for longer than 90 days but less than one year--\$256.

(C) Renewal of acudetox specialist certification expired for less than one year--\$25.

(4) Non-Certified Radiologic Technicians. Renewal of non-certified radiologic technician's registration expired for 1 - 90 days--\$25.

(5) Certification as a Non-Profit Health Organization fee for a late application for biennial recertification--\$1,000.

(6) Surgical Assistants:

(A) Surgical Assistant's registration permit expired for 90 days or less--\$201.

(B) Surgical Assistant- registration permit expired for longer than 90 days but less than one year--\$402.

§175.4. Application Forms.

(a) All information required on applications used by this board will conform to the Medical Practice Act and rules promulgated by this board. The board hereby adopts by reference the following forms:

(1) Physicians:

(A) Application for full physician licensure.

(B) Application for telemedicine license.

(C) Application for administrative medicine license.

(D) Application for reissuance of license following re-  
vocation.

(E) Application for distinguished professor temporary  
license.

(F) Application for state health agency temporary li-  
cence.

(G) Application for a visiting physician temporary li-  
cence.

(H) Application for visiting professor temporary li-  
cence.

(I) Application for National Health Service Corps tem-  
porary license.

(J) Application for faculty temporary license.

(K) Application for postgraduate research temporary li-  
cence.

(L) Application for medically underserved area tempo-  
rary license.

(M) Application for regular temporary license.

(N) Application for initial physician in training permit.

(O) Application for physician in training permit for pro-  
gram transfer

(P) Application for evaluation or re-evaluation of post-  
graduate training program.

(Q) Initial biennial registration permit.

(R) Subsequent biennial registration permit.

(S) Additional biennial office-based anesthesia regis-  
tration.

(T) Continuing medical education temporary license.

(U) Application for a duplicate wall certificate.

(2) Physician Assistants:

(A) Application for licensure.

(B) Application for reissuance of license following re-  
vocation.

(C) Application for temporary license.

(D) Notice of intent to supervise a physician assistant.

(E) Notice of intent to practice as a physician assistant.

(F) Initial annual permit.

(G) Subsequent annual permit.

(3) Acupuncturists/Acudetox Specialists/Continuing Edu-  
cation Providers:

(A) Application for acupuncture licensure.

(B) Application for temporary license for an acupunc-  
turist.

(C) Application for acupuncturist distinguished profes-  
sor temporary license.

(D) Application for acudetox specialist certification.

(E) Application for continuing acupuncture education  
provider.

(F) Application for review of continuing acupuncture  
education courses.

(G) Application for review of continuing acudetox  
acupuncture education courses.

(H) Initial annual permit for acupuncturist.

(I) Subsequent annual permit for acupuncturist.

(J) Annual renewal for acudetox specialist certification.

(4) Non-Certified Radiologic Technicians:

(A) Application for initial non-certified radiologic tech-  
nician permit.

(B) Application for renewal of non-certified radiologic  
technician permit.

(C) Application for supervision of a non-certified radi-  
ologic technician.

(5) Non-Profit Health Organization:

(A) Application for initial certification.

(B) Application for recertification.

(6) Surgical Assistants:

(A) Application for licensure.

(B) Application for temporary license.

(C) Application for renewal of license.

(D) Application for reissuance of license following re-  
vocation.

(b) These forms may be examined and copies may be obtained at the offices of the Texas Medical Board, 333 Guadalupe, Tower 3, Suite 610, Austin, Texas 78701.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## CHAPTER 178. COMPLAINTS

### 22 TAC §§178.2 - 178.8

The Texas Medical Board proposes amendments to §§178.2 - 178.8, concerning Complaints.

The amendment to §178.2 clarifies definition of "Complainant;" conforms terms "Preliminary Investigation" and "Official Investigation" to statutory changes made in SB 419. The amendment to §178.3 changes the name of the agency to conform with statutory change made by SB 419. The amendment to §178.4 clarifies confidentiality of identity of a Complainant and waiver of confidentiality. The amendment to §178.5 conforms and makes consistent use of term "preliminary investigation" to conform to statutory changes made in SB 419. The amendment to §178.6 conforms and makes consistent use of terms "preliminary investigation" and "official investigation," to conform to statutory changes made in SB 419; conforms term "Expert Physician Reviewers" to statutory changes. The amendment to §178.7 conforms name of Informal Show Compliance and settlement Conference to other rules. The amendment to §178.8 clarifies rule dealing with appeals of dismissal of complaints by complainants.

Michele Shackelford, General Counsel, Texas Medical Board, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the sections as proposed.

Ms. Shackelford also has determined that for each year of the first five years the amendments as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be providing additional clarity to the rules by conforming to the language of the current statute. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The following statutes, articles or codes are affected by this proposal: Sections 178.2, 178.5 and 178.6--§154.057(b), Texas Occupations Code; Section 178.3--§152.001, Texas Occupations Code; Section 178.4--§164.007(c), Texas Occupations Code; Section 178.7--§164.003, Texas Occupations Code; Section 178.8--§154.056(a)(4), Texas Occupations Code.

#### §178.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicate otherwise.

(1) Act--Title 3, Subtitle B, Chapter 151-165, Tex Occ. Code Ann. for physicians; Title 3, Subtitle C, Chapter. 204, Tex Occ. Code Ann. for physician assistants; Title 3 Subtitle C, Chapter 206, Tex Occ. Code Ann. for surgical assistants; and Title 3, Subtitle C, Chapter 205, Tex Occ. Code Ann. for acupuncturists.

(2) Address of record--The mailing address of each subject licensee as provided to the board pursuant to the Act.

(3) Agency--The divisions, departments, and employees of the Texas ~~[State Board of]~~ Medical Board ~~[Examiners]~~, the Texas ~~[State Board of]~~ Physician Assistant Board ~~[Examiners]~~, and the Texas State Board of Acupuncture Examiners.

(4) Baseless or unfounded--Not based on any evidence or fact.

(5) Board--The appointed members of the Texas ~~[State Board of]~~ Medical Board ~~[Examiners]~~ for physicians and surgical assistants, the Texas ~~[State Board of]~~ Physician Assistant Board ~~[Assistants]~~ for physicians assistants, and the Texas State Board of Acupuncture for acupuncturists.

(6) Complaint--Information provided to the board that alleges a ~~[licensee has committed]~~ a violation of the Act.

(7) Complainant--Any [A] person, including an individual, [a] partnership, association, corporation, or other entity, who initiates a complaint with the board against a licensee. A complainant may be a patient, a family member of a patient, a health care professional, or any other person who has information regarding the possible violation of the Act. A complainant may be anonymous, in which case the complaint will be investigated to the extent that information is provided on which an investigation can be initiated.

(8) Jurisdictional--A matter over which the board has ~~[the]~~ authority ~~[to investigate and act upon]~~.

(9) Licensee--A person to whom the board has issued a license, permit, certificate, approved registration, or similar form of permission authorized by law.

(10) Official Investigation--an investigation conducted by the agency of a complaint that, after preliminary investigation, has been determined to be jurisdictional and has been officially filed.

(11) Preliminary Investigation--an investigation conducted by the agency upon the initiation of a complaint to determine whether

the complaint is jurisdictional and whether the complaint should be filed and an official investigation conducted.

(12) ~~[(40)]~~ Subject licensee--The licensee against whom a complaint is filed.

#### *§178.3. Complaint Procedure Notification.*

(a) Methods of Notification. Pursuant to the Act, for the purpose of directing complaints to the board, the board and its licensees shall provide notification to the public of the name, mailing address, and telephone number of the board by one or more of the following methods:

(1) displaying in a prominent location at a licensee's place of business, signs in English and Spanish of no less than 8 1/2 inches by 11 inches in size with the board-approved notification statement printed alone and in its entirety in black on white background in type no smaller than standard 24-point Times Roman print with no alterations, deletions, or additions to the language of the board-approved statement; or

(2) placing the board-approved notification statement printed in English and Spanish in black type no smaller than standard 10-point 12-pitch typewriter print on each bill for services by a licensee with no alterations, deletions, or additions to the language of the board-approved statement; or

(3) placing the board-approved notification statement printed in English and Spanish in black type no smaller than standard 10-point, 12-pitch typewriter print on each registration form, application, or written contract for services of a licensee with no alterations, deletions, or additions to the language of the board-approved statement.

(b) Approved English Notification Statement. The following notification statement in English is approved by the board for purposes of these rules and the Act: NOTICE CONCERNING COMPLAINTS, Complaints about physicians, as well as other licensees and registrants of the Texas ~~[State Board of]~~ Medical Board ~~[Examiners]~~, including physician assistants, acupuncturists, and surgical assistants may be reported for investigation at the following address: Texas ~~[State Board of]~~ Medical Board ~~[Examiners]~~, Attention: Investigations, 333 Guadalupe, Tower 3, Suite 610, P.O. Box 2018, MC-263, Austin, Texas 78768-2018, Assistance in filing a complaint is available by calling the following telephone number: 1-800-201-9353, For more information, please visit our website at [www.tmb.state.tx.us](http://www.tmb.state.tx.us) ~~[www.ts-bme.state.tx.us]~~.

(c) Approved Spanish Notification Statement. The following notification statement in Spanish is approved by the board for purposes of these rules and the Act: AVISO SOBRE LAS QUEJAS, Las quejas sobre médicos, así como sobre otros profesionales acreditados e inscritos en la Junta de Examinadores Médicos del Estado de Texas, incluyendo asistentes de médicos, practicantes de acupuntura y asistentes de cirugía, se pueden presentar en la siguiente dirección para ser investigadas: Texas ~~[State Board of]~~ Medical Board ~~[Examiners]~~, Attention: Investigations, 333 Guadalupe, Tower 3, Suite 610, P.O. Box 2018, MC-263, Austin, Texas 78768-2018, Si necesita ayuda para presentar una queja, llame al: 1-800-201-9353, Para obtener más información, visite nuestro sitio web en [www.tmb.state.tx.us](http://www.tmb.state.tx.us) ~~[www.ts-bme.state.tx.us]~~.

(d) Figures 1 and 2 are samples of the type print referenced in subsection (a) of this section.

Figure 1: 22 TAC §178.3(d)

Figure 2: 22 TAC §178.3(d)

#### *§178.4. Complaint Initiation.*

(a) A complainant may initiate a complaint by submitting the information concerning the complaint to the board. This information should include at a minimum:

- (1) The name and contact information of the complainant;
- (2) The name of the licensee against who the complaint is filed;
- (3) The time and place of the alleged violation of the Act; and
- (4) If applicable, the name and birth date of the patient who the physician has allegedly harmed.

(b) The board may file a complaint on its own initiative.

(c) The identity of a ~~[non-testifying]~~ complainant, as well as the complaint itself, is part of the investigative information gathered by board employees and shall remain confidential. Confidentiality shall be waived only by a written statement of the complainant specifically waiving confidentiality or by the complainant testifying in a contested case hearing.

(d) A peer review committee, licensee, and all other groups named in §§160.003, 204.208, 205.304, and 206.159 of the Act shall report relevant information to the board relating to the acts of the licensee in this state if, in their opinion, that licensee poses a continuing threat to the public welfare through the licensee's continued practice. The report shall include a narrative statement describing the time, date, and place of the acts or omissions on which the report is based; and it shall be made to the board as soon as possible after the threat ~~[risk]~~ is identified and the relevant information can be assembled.

#### *§178.5. Preliminary Investigation of a Complaint ~~[Complaint Evaluation]~~.*

(a) Once a complaint has been received by the board, agency staff shall conduct a preliminary investigation ~~[an initial screen]~~ of the complaint within 30 days. If the complaint alleges a violation of the standard of care, the staff member conducting the preliminary investigation ~~[an initial screen]~~ of the complaint shall be a licensed health care provider in Texas.

(b) As part of the preliminary investigation ~~[evaluation]~~ of each complaint, the following minimum additional evidence will be gathered:

- (1) The history of the subject licensee collected and maintained by the board; and
- (2) The history of the subject licensee maintained by the National Practitioner's Data Bank.

(c) During this preliminary investigation ~~[initial evaluation period]~~, the agency staff may make reasonable efforts to contact the complainant concerning the complaint. Any additional information received from the complainant will be added to the information maintained on the complaint.

(d) During this preliminary investigation ~~[initial evaluation period]~~, the subject licensee may be given the opportunity to respond to the allegations ~~[against him]~~. If the subject licensee is given this opportunity, the response must be received within the time prescribed by agency staff. Any additional information received from the subject licensee will be added to the information maintained on the complaint.

(e) At the conclusion of the preliminary investigation ~~[30-day initial screening period]~~, agency staff shall determine whether a complaint is jurisdictional and whether there is probable cause to justify further investigation.

(f) If a complaint is determined to be non jurisdictional, the complaint may be referred to another government agency for investigation.

(g) If a complaint is determined to be non jurisdictional, the complainant will be notified of this decision.

#### §178.6. Complaint Filing.

(a) If the preliminary investigation shows that a complaint is ~~[determined to be]~~ jurisdictional and that there is probable cause to justify further investigation, the complaint will be filed with the agency and an official ~~[for]~~ investigation shall be conducted.

(b) Once a complaint has been filed, a priority will be assigned to the complaint as provided in Sec. 154.056(a)(1) of the Act.

(c) Once a complaint is filed, the subject licensee and the complainant will be notified of the filing of the complaint.

(d) After a complaint has been filed, the complaint will be investigated as provided in Chapter 179 of this title (relating to Investigations), to include the appropriate referral to Expert Physician Reviewers, [an expert panel] as provided in Chapter 182 of this title (relating to Use of Experts).

(e) Complaints received based on information and facts that have previously been or are currently being investigated will not warrant additional investigation.

#### §178.7. Complaint Resolution.

(a) After sufficient information and evidence has been gathered, a determination will be made as to whether the information and evidence gathered indicate that a violation of the Act has occurred.

(b) If the information and evidence gathered indicate that a violation of the Act has occurred, the investigation will be referred for an Informal Show Compliance and Settlement Conference (ISC) ~~[Proceeding]~~. This hearing must be scheduled not later than the 180th day after the complaint has been filed, unless good cause is shown for scheduling the meeting after that date. Once the ISC ~~[informal Show Compliance Proceeding]~~ is scheduled, the complaint shall be governed by Chapter 187 of this title (relating to Procedural Rules).

(c) If the information and evidence gathered is insufficient to support that a violation of the Act has occurred, the investigation will be referred to a disciplinary committee of the board for evaluation. If the disciplinary committee of the board determines there is insufficient evidence to support that a violation of the Act has occurred, the case will be recommended to the board for the dismissal of the complaint. If the board approves the disciplinary committee of the board's recommendation, the complaint will be dismissed.

(d) If a complaint is dismissed, a letter shall be sent to the complainant explaining the reason for the dismissal.

(e) If the complaint is dismissed, a letter shall be sent to the address of record of the subject licensee informing him of the dismissal. The board may inform the subject licensee of any recommendations that may improve the subject licensee's practice.

(f) If the complaint is determined to be baseless or unfounded, the complaint shall be dismissed~~;~~ and a letter shall be sent to the address of record of the subject licensee informing him that the complaint was dismissed due to the fact that it was baseless and unfounded.

#### §178.8. Appeals.

(a) Initiation. Following the receipt of the notice of dismissal of a complaint, the complainant may ~~[file an]~~ appeal ~~[of]~~ the dismissal ~~to [of his complaint with]~~ the board. To be considered by the board, the appeal must:

(1) be in writing;

(2) be received within 60 days of the mailing of the notice of dismissal of the complaint; and

(3) list the reason(s) for the appeal. The appeal should provide sufficient information to indicate that additional review is warranted.

(b) Review of an Appeal. Appeals ~~[Valid appeals]~~ will be considered by a disciplinary committee of the board. Upon review of an appeal, subject to the approval of the board, a disciplinary committee of the board may determine any of the following:

(1) The investigation should remain closed;

(2) Additional information needs to be obtained before a determination on the appeal can be made;

(3) Additional information needs to be obtained before a determination can be made as to whether a violation of the Act occurred; and

(4) The case should be referred to an ISC ~~[Informal Show Compliance Proceeding]~~ for a determination.

(c) Personal Appearances. The complainant has the right to personally appear before a disciplinary committee of the board. This appearance must be scheduled through agency staff. This appearance may be limited in time and scope by the chair of the disciplinary committee of the board that the appeal is before.

(d) Notice. The complainant shall be notified of the Board's decision concerning the [his] appeal.

(e) Appeals Limited. Only one appeal shall be allowed for each complaint.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## CHAPTER 179. INVESTIGATIONS

### 22 TAC §§179.2 - 179.4, 179.6

The Texas Medical Board proposes amendments to §§179.2 - 179.4 and 179.6, concerning Investigations.

The amendment to §179.2 clarifies the definition of a Complainant. The amendment to §179.3 clarifies that any person who has provided a statement to the board may obtain a copy of that statement. The amendment to §179.4 establishes time for obtaining medical records under normal circumstance at 14 days and requires that evidence of intemperate use of drugs or alcohol be evidence that would lead a reasonable person to believe that the licensee is impaired. The amendment to §179.6 provides definition of "good cause" for not scheduling an ISC



within 180 days required by SB 419, and notice to parties of failure to schedule within statutory time.

Michele Shackelford, General Counsel, Texas Medical Board, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the sections as proposed.

Ms. Shackelford also has determined that for each year of the first five years the amendments as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to provide clarified language, assure that a person can get a copy of a statement made to the board, clarifying that normal time to respond to a request for information is 14 days and that evidence of impairment must be such that a reasonable person would believe that the licensee is impaired and providing rule definition for good cause, so that the public may know the valid reasons for delay of bringing a disciplinary matter to resolution. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §152.001 and §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The following statutes, articles or codes are affected by this proposal: Section 179.2--§154.051, Texas Occupations Code; Section 179.3--none; Section 179.4--none; Section 179.6--§164.003, Texas Occupations Code.

#### *§179.2. Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicate otherwise.

(1) Act--Title 3, Subtitle B, Chapter 151-165, Tex Occ. Code Ann. for physicians; Title 3, Subtitle C, Chapter. 204, Tex Occ. Code Ann. for physician assistants; Title 3 Subtitle C, Chapter 206, Tex Occ. Code Ann. for surgical assistants; and Title 3, Subtitle C, Chapter 205, Tex Occ. Code Ann. for acupuncturists.

(2) Address of record--The mailing address of each subject licensee as provided to the board pursuant to the Act.

(3) Agency--The divisions, departments, and employees of the Texas Medical Board [~~State Board of Medical Examiners~~], the Texas [~~State Board of~~] Physician Assistant Board [~~Examiners~~], and the Texas State Board of Acupuncture Examiners.

(4) Agency representative--An investigator, other agency staff, board member, or agent of the agency.

(5) Baseless or unfounded--Not based on any evidence or fact.

(6) Board--The appointed members of the Texas Medical Board [~~of Medical Examiners~~] for physicians and surgical assistants, the Texas [~~Board of~~] Physician Assistants Board for physicians assistants, and the Board of Acupuncture for acupuncturists.

(7) Complaint--Information provided to the board that alleges a [~~licensee has committed a~~] violation of the Act.

(8) Complainant--Any [A] person, including a partnership, association, corporation, or other entity, who files a complaint with the board against a licensee. A complainant may be a patient, a family member of a patient, a health care professional, or any other person who has information regarding the possible violation of the Act.

(9) Jurisdictional--A matter over which the board has the authority to investigate and act upon.

(10) Licensee--A person to whom the board has issued a license, permit, certificate, approved registration, or similar form of permission authorized by law.

(11) Subject licensee--The licensee against whom a complaint is filed.

#### *§179.3. Confidentiality.*

All complaints, adverse reports, investigation files, other investigation reports, and other investigative information in the possession of, received or gathered by the board shall be confidential as provided by the Medical Practice Act ("the Act"), Title 3 Subtitle B Tex. Occ. Code Ann. and no employee, agent, or member of the board may disclose information contained in such files except in the following circumstances:

(1) to the appropriate licensing authorities in other states, the District of Columbia, or a territory or country in which the physician is licensed or is applying for licensure;

(2) to a peer review committee considering a physician's application to obtain or retain privileges;

(3) to appropriate law enforcement agencies if the information is relevant to an active criminal investigation or if the investigative information indicates a crime may have been committed;

(4) to a health care entity upon receipt of written request, if there is a current complaint under active investigation that has been assigned by the executive director to a person authorized by the board to pursue legal action.

(5) to other persons if required during the course of the investigation; [~~and~~]

(6) to other regulatory agencies as required by law; and

(7) a person who has provided a statement may receive a copy of the statement.

#### *§179.4. Request for Information and Records from Physicians.*

(a) Medical records. Upon the request by the board or board representatives, a licensee shall furnish to the board copies of medical records or the original records within a reasonable [~~the~~] time period, as prescribed at the time of the request. "Reasonable time," as used in this section, shall mean fourteen calendar days or a shorter time if required by the urgency of the situation or the possibility that the records may be lost, damaged, or destroyed.

(b) Application for license renewal and registration permits. A licensee shall furnish a written explanation of his or her answer to any question asked on the application for license renewal or registration permit, if requested by the board. This explanation shall include all details as the board may request and shall be furnished within two weeks of the date of receipt of the board's request.

(c) Impaired licensees.

(1) A licensee shall report to the board if the licensee is aware of another licensee who poses a continuing threat to the public welfare because the said licensee is unable to practice medicine with

reasonable skill and safety to patients because of illness; drunkenness; excessive use of drugs, narcotics, chemicals, or another substance; or a mental or physical condition.

(2) If the board has probable cause to believe that a licensee is impaired, the board shall require a licensee to submit to a mental and/or physical examination by a physician or physicians designated by the board. Under the Act, an impaired licensee is considered to be one who is unable to practice within his field with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material; or as a result of any mental or physical condition. Probable cause may include, but is not limited to, any one of the following:

(A) sworn statements from two people, willing to testify before the board, that a certain licensee is impaired;

(B) a sworn statement from a representative of the Texas Medical Association's or the Texas Osteopathic Medical Association's impaired physician program, stating that the representative is willing to testify before the board that a certain licensee is impaired;

(C) evidence that a licensee left a treatment program for alcohol or chemical dependency before a completion of that program;

(D) evidence that a licensee has engaged in the [is guilty of] intemperate use of drugs or alcohol at a time and under circumstances that would lead a reasonable person to believe that the licensee is impaired;

(E) evidence of repeated arrests of a licensee for intoxication;

(F) evidence of recurring temporary commitments to a mental institution of a licensee; or

(G) medical records showing that a licensee has an illness or condition that results in the inability to function properly in his or her practice.

(d) Prescription drugs and controlled substances. The board or its authorized representative shall have the power to inspect a licensee's inventory of prescription drugs and obtain samples of those substances, and to inspect and copy records of purchases and disposals of drugs, including those listed in the Texas Controlled Substances Act or controlled substances scheduled in the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970.

(e) Response to Board Requests. In addition to the requirements of responding or reporting to the board under this section, a physician or license holder of the board shall respond in writing to all written board requests for information within 10 days of receipt of such request. Failure to timely respond may be grounds for disciplinary action by the board.

#### §179.6. Time Limits.

(a) Each investigation shall be completed before the passage of the 180th day after the complaint has been filed and an official [for] investigation opened, unless there is good cause as to why the investigation could not be completed within that time. Good cause shall include, but shall not be limited to:

(1) the unavailability of pertinent documents that the agency has made all reasonable efforts to obtain;

(2) the refusal of the subject licensee to cooperate during the course of the investigation; and

(3) Extended illness of a board investigator or other board employee integral to the completion of the investigation;

(4) delinquency in reviewing the case and submitting a report by an Expert Physician Reviewer;

(5) the necessity of additional investigation as determined by the Quality Assurance Committee;

(6) additional complaints pending investigation regarding the licensee; and

(7) [3] other events beyond the control of the agency.

(b) The board may not dismiss a complaint solely on the grounds that an investigation has not been completed and/or the case has not been scheduled for hearing within 180 days.

(c) If an investigation has not been completed and/or the case has not been scheduled for hearing within 180 days, the board must notify the parties to the complaint as to why these deadlines were not met. This notice is not required if it would jeopardize an investigation.

(d) [6b] There is no time limit from the time at which a violation of the Act occurred by which the board must investigate a complaint.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

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For further information, please call: (512) 305-7016



## CHAPTER 180. REHABILITATION ORDERS

### 22 TAC §180.1

The Texas Medical Board proposes amendments to §180.1, concerning Rehabilitation Orders.

The amendment to §180.1 revises subsection (c)(1) to reflect exact language of statute; conforms the rule to statutory requirements of SB 419 that Rehabilitation Order may not be used if there is a violation of the standard of care related to intemperate use of drugs or alcohol; adds requirement to inform and provide information to a local or statewide private medical association if the rehabilitation order requires the licensee to participate in activities or programs provided by the organization; reorganizes the rule for clarity.

Michele Shackelford, General Counsel, Texas Medical Board, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the section as proposed.

Ms. Shackelford also has determined that for each year of the first five years the amendment as proposed is in effect the public benefit anticipated as a result of enforcing the section will be clarification of ambiguous statement in previous rule and updating the rule in accordance with statutory amendments. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The following statutes, articles or codes are affected by this proposal: §164.202, Texas Occupations Code.

*§180.1. Rehabilitation Orders.*

(a) Purpose of chapter. The purpose of this chapter is to establish the process for the board's review and proposal of a nondisciplinary private rehabilitation order ("rehabilitation order") to a licensee or licensure applicant ("applicant") pursuant to the Medical Practice Act ("Act"), Tex. Occ. Code Ann. §§164.202-.204.

(b) Purposes of rehabilitation orders.

(1) To provide an incentive to a licensee or applicant to seek early assistance with drug or alcohol related problems or mental or physical conditions that present a potentially dangerous limitation or inability to practice medicine with reasonable skill and safety.

(2) To protect the public by requiring the impaired licensee or applicant to obtain treatment and/or limit or refrain from the practice of medicine while suffering from an impairment.

(c) Eligibility for rehabilitation order. The board may issue a rehabilitation order for a licensee or applicant, as a prerequisite for issuing a license, for the following reasons:

(1) intemperate use of drugs or alcohol directly resulting from habituation or addiction caused by medical care or treatment provided by a physician [the licensee or applicant suffers from an addiction caused by treatment];

(2) the licensee or applicant self-reported intemperate use of drugs or alcohol as set out in subsection (f) of this chapter, and has not previously been the subject of a substance abuse-related order of the board;

(3) a court has determined that the licensee or applicant is of unsound mind;

(4) the licensee or applicant has an impairment as determined by a mental or physical examination; or

(5) an admission by the licensee or applicant of an illness or a physical or mental condition that limits or prevents the person's practice of medicine with reasonable skill and safety.

(d) Factors for board consideration in proposing a rehabilitation order.

(1) General. In determining whether to recommend a rehabilitation order to an otherwise eligible licensee or applicant, the board shall consider all relevant factors.

(2) Federal and state drug and alcohol laws. Absent a showing of good cause by the licensee or applicant, the board may not grant a rehabilitation order if any of the following factors exist:

(A) the licensee or applicant has been found guilty, pled guilty, or received deferred adjudication of any felony or misdemeanor related to the intemperate use of drugs or alcohol at issue;

(B) the licensee or applicant was required to or voluntarily surrendered his/her drug license(s) or certification(s) issued by

the Federal Drug Enforcement Administration (DEA), Texas Department of Public Safety (DPS) or comparable authority of another state in connection with a criminal investigation related to the intemperate use of drugs or alcohol at issue; and

(C) the licensee's or applicant's intemperate use of drugs or alcohol led to a violation of Sections 481 and 483 of the Texas Health and Safety Code or a violation of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.).

(3) The licensee or applicant and board staff may present information to the Board's representatives relevant to whether any violation of the standard of care is a result of the intemperate use of drugs or alcohol. The Board's representatives may not recommend a confidential rehabilitation order if they determine that a violation of the standard of care was a result of the intemperate use of drugs or alcohol. The board shall have complete discretion to determine whether any violation of the standard of care was a result of the intemperate use of drugs or alcohol.

(4) ~~[(3)]~~ Additional factors to be established by a licensee or applicant. Licensees or applicants otherwise eligible for a rehabilitation order should provide evidence of the following factors to be considered by the board prior to the board proposing a rehabilitation order:

(A) steps taken to prevent potential future harm to the public that may include a treatment and monitoring plan;

(B) existence of rehabilitative potential;

(C) a clinical diagnosis of a physical or mental condition and supporting medical records; ~~[and]~~

(D) that the licensee or applicant cooperated with board staff during the course of the investigation; and

(E) applicability of any other mitigating factors set forth in Section 190.15(b) of this title (relating to Aggravating and Mitigating Factors).

(5) ~~[(4)]~~ Additional factors to be established by board staff. If applicable, board staff shall present evidence of the following factors to be considered by the board prior to the board proposing a rehabilitation order:

(A) intemperate use of drugs or alcohol by the licensee or applicant in a manner affecting the standard of care [caused patient harm];

(B) a complaint alleging intemperate use of drugs or alcohol by the licensee or applicant in a manner affecting the standard of care has been received by the board, and the status of the investigation of the complaint;

(C) ~~[(B)]~~ licensee or applicant caused ~~[economic]~~ harm to any individual or entity;

(D) ~~[(C)]~~ licensee or applicant has a disciplinary history, including criminal convictions, disciplinary orders with board or other state medical boards, disciplinary actions by other state or federal regulatory agencies, and peer review actions by hospitals or medical societies;

(E) ~~[(D)]~~ licensee or applicant inappropriately self-treated or self-prescribed; ~~[and]~~

(F) ~~[(E)]~~ licensee or applicant violated provisions of the Act other than §§164.051(a)(4), (a)(5) and 164.052(a)(5)

(G) applicability of any other aggravating factors set forth in Section 190.15(a) of this title (relating to Aggravating and Mitigating Factors).

(e) Concurrent public agreed order. The board may ~~approve~~ ~~recommend~~ a public agreed order to run concurrently with any ~~for a licensee or applicant in addition to, or in lieu of, a~~ confidential rehabilitation order, ~~authorized by this section~~ ~~for violations of the Act or board rules~~.

(f) Requirements ~~Guidelines~~ for self-reports. To be eligible for a rehabilitation order based on a self-report of intemperate use of drugs or alcohol:

(1) the self-report must have been made to the board: ~~Procedure~~.

(A) within five years after the last commission of intemperate use of drugs or alcohol;

(B) before the filing of any criminal charges involving drugs or alcohol use; and

(C) before the board receives a complaint or other report of intemperate use;

(2) the licensee or applicant making the self-report has no prior board orders based on use of drugs or alcohol;

(3) the licensee or applicant has not committed a violation of the standard of care as a result of the intemperate use of drugs or alcohol;

(4) no valid complaint with regard to the licensee or applicant based on intemperate use of drugs or alcohol in a manner affecting the standard of care has been received by the board prior to the time the licensee or applicant signs the proposed rehabilitation order. If the board receives any complaint regarding the standard of care before the licensee or applicant signs the proposed rehabilitation order, the licensee or applicant is not eligible for a rehabilitation order unless the board makes a determination that the licensee or applicant did not violate the standard of care as a result of the intemperate use of drugs or alcohol;

(5) Self-reports of intemperate use of drugs or alcohol by licensees or applicants ~~must~~ ~~shall~~ be made through ~~one or more of the following methods~~:

~~[(A)] a written ~~hand-written or typed~~ statement by the licensee or applicant, or the authorized agent of the licensee or applicant, submitted to the board or board staff by mail, email, messenger, telefacsimile transmission, or hand-delivery. The self-report may be made through ~~which has been signed by the licensee or applicant and may include~~ responses provided as part of an application for a license or writing submitted for purposes of licensure renewal. ~~;~~ ~~or~~~~

~~[(B)] a hand-written or typed statement submitted to the board or board staff by mail, messenger, telefacsimile transmission, or hand-delivery which has been signed by an authorized agent of the licensee or applicant with the prior approval of the licensee or applicant.~~

(6) ~~[(2)] [Contents of Self-report. Prior to the board considering whether to propose a rehabilitation order,] the licensee or applicant must ~~shall~~ provide a complete self-report of the intemperate use of alcohol or drugs that includes, but is not limited to, the following information:~~

(A) the approximate dates of intemperate use;

(B) the extent of intemperate use;

(C) the substance(s) used;

(D) the method(s) of ingestion; ~~and~~

(E) all history of substance abuse treatment to include approximate dates of treatment and the specific locations where treatment was received; ~~and~~ ~~[-]~~

(F) a description of any incident that a reasonably prudent physician would believe could result in an allegation of the physician's violation of the standard of care that occurred during the time of intemperate use or, if no violation of the standard of care has occurred, a statement that no violation of the standard of care occurred during the time of intemperate use.

~~[(3) Timing of self-report. To be considered a self-report, the notice given to the board by the licensee or applicant must:]~~

~~[(A)] be given within five years from the last commission of intemperate use of drugs or alcohol; and]~~

~~[(B)] be given prior to the board receiving a complaint regarding a licensee's or applicant's alleged intemperate use.]~~

(g) Guidelines for determination of a mental or physical condition.

(1) Mental condition. Absent a showing of good cause, a licensee or applicant suffering from a mental condition should provide evidence to the board, including medical records, of a clinical diagnosis by a physician or mental health care provider of a condition listed under DSM-IV.

(2) Physical condition. Absent a showing of good cause, a licensee or applicant suffering from a physical condition should provide evidence to the board, including medical records, of a clinical diagnosis by a physician.

(3) Additional factors for consideration. A licensee's or applicant's diagnosis shall be considered along with the licensee's or applicant's:

(A) current and past levels of functioning;

(B) concurrent medical disorders;

(C) complicating factors such as substance-related disorders;

(D) compliance with treatments;

(E) response to treatment;

(F) prognosis; and

(G) stage of recovery from the illness.

(4) Hearing. An informal show compliance proceeding shall be considered an evidentiary hearing for the purposes of this subsection and in accordance with §164.202 of the Act.

(h) Confidentiality. Consideration of proposed agreed rehabilitation orders shall be conducted so as to keep the identity of the licensee or applicant confidential.

(1) Confidentiality may be preserved through one or more of the following:

(A) confidential informal show compliance proceedings;

(B) confidential modification and termination requests and proceedings;

(C) executive sessions by the board and board committee; and/or,

(D) redaction of identifying information when such orders are considered in open session.

(2) The rehabilitation order may require the licensee or applicant to participate in activities or programs provided by a local or statewide private medical association. If the board makes such a requirement, the board shall:

(A) inform the association of the licensee's duties under the order, including specific guidance to enable the association to comply with any requirements necessary to assist in the physician's rehabilitation;

(B) provide to the association any information, including confidential information, that the board determines to be necessary, including a copy of the rehabilitation order; and

(C) advise the association that the information provided by the board is and remains confidential, is not subject to discovery, subpoena, or other means of legal compulsion, and may be disclosed only to the board, in accordance with Section 164.205(b), Tex. Occ. Code.

(3) ~~[(2)]~~ The board, board staff, and agents of the board will attempt in good faith to ensure that the terms and conditions of a rehabilitation order remain confidential. However, in order to ensure compliance with a rehabilitation order, it may be necessary to disrupt the activities of a licensee or applicant and to contact the licensee or applicant, including but not limited to telephone calls, mail, or unannounced visits to the licensee's or applicant's place of employment or residence.

(4) ~~[(3)]~~ Upon a determination by the board that licensee or applicant has violated a rehabilitation order, the rehabilitation order may ~~[will]~~ become a public document and subject to the Texas Public Information Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

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For further information, please call: (512) 305-7016



## CHAPTER 182. USE OF EXPERTS

### 22 TAC §§182.3 - 182.5, 182.7, 182.8

The Texas Medical Board proposes amendments to §§182.3 - 182.5, 182.7 and new §182.8, concerning Use of Experts.

The amendment to §182.3 conforms the rule to new statutory changes in SB 419. The amendment to §182.4 authorizes use of consultants as needed by the agency. The amendment to §182.5 sets out the composition, qualifications, length of time a person may serve on the Expert Physician Panel, and grounds for removal from the panel. The amendment to §182.7 updates references to Expert Physician Reviewers to conform to statutory changes in SB 419. New §182.8 sets out a procedure for random selection of Expert Physician Reviewers to review the standard

of care in a particular disciplinary investigation, grounds for conflicts of interest, and procedures for Expert Physician Review.

Michele Shackelford, General Counsel, Texas Medical Board, has determined that for the first five-year period the amendments and new rule are in effect there will be no fiscal implications to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the sections as proposed.

Ms. Shackelford also has determined that for each year of the first five years the amendments and new section are in effect the public benefit anticipated as a result of enforcing the sections will be updated rules in accordance with statutory amendments, updated rule to conform to practice of the agency in using consultants, providing rules governing the Expert Physician Panel, including the qualifications, length of time a person may serve, and grounds for removal, as required by statute, conforming rules to revised statutory language and providing standards for Expert Physician review of standard of care cases, as required by statutory changes in SB 419. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendments and new section are proposed under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The following statutes, articles or codes are affected by this proposal: Sections 182.3-182.5 and 182.7--§154.0056(e), Texas Occupations Code; Section 182.8--none

#### §182.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Consultant--An individual with specialized knowledge or training selected by the agency to review complaints and investigations and provide monitoring of compliance issues ~~[filed by the agency]~~.

(2) Expert Physician Panel (or Expert Panel) ~~[Expert Panel]~~--Physicians appointed by the board who may serve as Expert Physician Reviewers. ~~[to consider particular complaints related to alleged violations of standard of care.]~~

(3) Expert Physician Reviewer (or Reviewer) ~~[Panel Member]~~--A member of the Expert Panel selected to consider a particular complaint ~~[physician appointed by the board to assist in investigations filed by the agency]~~ involving alleged violations of the standard of care as set out in §154.058 of the Act.

(4) Expert Witness--An individual with specialized knowledge or training who contracts with the board to provide expert opinions in the investigation and resolution of disciplinary matters.

#### §182.4. Use of Consultants.

Consultants shall be utilized as needed by the agency ~~[The initial screening of each complaint that involves the alleged violation of the standard of care shall include review by a consultant or employee with a degree in a health care field].~~

#### §182.5. ~~[Use of]~~ Expert Panel.

(a) Physicians may be appointed to the Expert Panel as follows: [If the initial review of a complaint indicates that an act by a licensee may fall below an acceptable standard of care, the complaint shall be referred to the expert physician panel for review.]

(1) Composition. The Expert Panel shall be composed of physicians approved by the board to act as Expert Physician Reviewers. [and Qualifications. Selection criteria for appointment to the panel shall include:]

- ~~[(A) licensed to practice medicine in Texas]~~
- ~~[(B) certification by the American Board of Medical Specialties or the Bureau of Osteopathic Specialists;]~~
- ~~[(C) no history of licensure restriction;]~~
- ~~[(D) no history of peer discipline;]~~
- ~~[(E) acceptable malpractice complaint history; and]~~
- ~~[(F) in active practice as defined by §163.11 of this title (relating to the Active Practice of Medicine).]~~

(2) Qualifications. To be eligible to serve on the Expert Panel, a physician must meet the following criteria:

- ~~(A) licensed to practice medicine in Texas~~
- ~~(B) certification by the American Board of Medical Specialties or the Bureau of Osteopathic Specialists;~~
- ~~(C) no history of licensure restriction;~~
- ~~(D) no history of peer discipline;~~
- ~~(E) acceptable malpractice complaint history; and~~
- ~~(F) in active practice as defined by Section 163.11 of this title (relating to the Active Practice of Medicine).~~

(b) Term; Resignation; Removal.

(1) An Expert Physician Reviewer shall serve on the Expert Panel until resignation or removal from the Expert Panel.

(2) An Expert Physician Reviewer may resign from the Expert Panel at any time.

(3) An Expert Physician Reviewer may be removed from the Expert Panel for good cause at any time on order of the Executive Director. Good cause for removal includes:

- ~~(A) failure to maintain the eligibility requirements set forth above;~~
- ~~(B) failure to inform the board of potential or apparent conflicts of interest;~~
- ~~(C) repeated failure to timely review complaints or timely submit reports to the board;~~
- ~~(D) repeated failure to prepare the reports in the prescribed format.~~

(c) [(2)] Duties of the Expert Physician Panel [expert panel]. The Expert Physician Panel [Expert panel] members will assist the board with complaints, [and] investigations, and disciplinary actions relating to medical competency. [Cases concerning possible violation of the standard of care will be referred to the expert panel. Panel members who practice in the same specialty or similar area of practice as the licensee will be assigned to participate in the review of cases as deemed appropriate. Panel members assigned to a case will review all the medical information and records collected by the board and shall report findings in the prescribed format. A report shall be prepared by the expert panel to include the following:]

~~[(A) findings involving medical competency;]~~

~~[(B) applicable standard of care; and]~~

~~[(C) the clinical basis for the determinations, including any reliance on peer-reviewed journals, studies, or reports.]~~

#### §182.7. Interim Appointment.

A member of the Executive Committee may make an interim appointment of an Expert Physician Reviewer [expert panelist] to serve the board until the Reviewer [expert panelist] can be considered for appointment by the board at the next board meeting.

#### §182.8. Expert Physician Reviewers.

(a) Selection of Reviewers. Any complaint alleging a possible violation of the standard of care will be referred to Expert Physician Reviewers who will review all the medical information and records collected by the board and shall report findings in the prescribed format.

(1) Reviewers shall be randomly selected from among those Expert Panel members who practice in the same specialty as the physician who is the subject of the complaint.

(2) If there are no Expert Panel Members in the same specialty or if the randomly selected Reviewer has a potential or apparent conflict of interest that would prevent the Reviewer from providing a fair and unbiased opinion, that Reviewer shall not review the case and another Reviewer shall be randomly selected from among those Expert Panel members who practice in the same or similar specialty as the physician who is the subject of the complaint, after excluding the previously selected Reviewer.

(A) A potential conflict of interest exists if the selected Reviewer practices medicine in the same geographical medical market as the physician who is the subject of the complaint and

~~(i) is in direct competition with the physician or~~

~~(ii) knows the physician.~~

(B) An apparent conflict of interest exists if the Reviewer:

~~(i) has a direct financial interest or relationship with any matter, party, or witness that would give the appearance of a conflict of interest;~~

~~(ii) has a familial relationship within the third degree of affinity with any party or witness; or~~

~~(iii) determines that the Reviewer has knowledge of information that has not been provided by the Board and that the Reviewer cannot set aside that knowledge and fairly and impartially consider the matter based solely on the information provided by the Board.~~

(3) Notwithstanding the provisions of subsection (a)(2) of this section, if no Reviewer agrees to review the case who can qualify under the requirements of that subsection, a Reviewer who has a potential conflict may review the case, provided the Expert Reviewers' Report discloses the nature of the potential conflict.

(4) If any selected Reviewer has a potential or apparent conflict of interest, the Reviewer shall notify board staff of the potential or apparent conflict.

(b) Procedures for Expert Physician Review. The procedure for the use of Reviewers shall comply with Section 154.0561, Tex. Occ. Code. Reviewers shall be specifically informed that they may communicate with other Reviewers selected to review the case and that they should communicate with other Reviewers to attempt to reach a consensus.

(c) Expert Reviewers' Report. A report shall be prepared by the Expert Physician Reviewers to include the following:

- (1) the general qualifications of each Reviewer; and
- (2) the opinions agreed to by at least a majority of the Reviewers regarding:
  - (A) relevant facts concerning the medical care rendered;
  - (B) applicable standard of care;
  - (C) application of the standard of care to the relevant facts;
  - (D) a determination of whether the standard of care has been violated; and
  - (E) the clinical basis for the determinations, including any reliance on peer-reviewed journals, studies, or reports.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## CHAPTER 187. PROCEDURAL RULES

The Texas Medical Board proposes amendments to §§187.1, 187.2, 187.4, 187.9, 187.10, 187.14 - 187.16, 187.18, 187.20, 187.21, the repeal of §187.12 and §187.17, amendments to §§187.23, 187.26 - 187.31, 187.33, the repeal of §187.32 and §187.34, amendments to §§187.36, 187.37, 187.42, 187.43, new §187.45 and an amendment to §187.56, concerning Procedural Rules.

The amendments to §187.1, §187.2 change the name of Texas Medical Board and Texas Physician Assistant Board. The amendment to §187.4 includes "other proceeding of record" among proceedings that agreements must be in writing. The amendment to §187.9 sets out standards for refunds to be ordered to be paid to patients, as required by statutory change by SB 419; clarify when tolling does not apply to *locum tenens* practice. The amendment to §187.10 clarifies language regarding the purpose of informal board proceedings. The amendment to §187.14 sets out standards and procedures for a committee of Board employees to recommend dismissal or propose an agreed order in an enforcement, pursuant to authority granted by SB 419. The amendment to §187.15 requires a licensee to comply with reasonable requests to produce. The amendment to §187.16 clarifies language regarding ISCs, consolidating provisions from other sections and eliminating the provision for an ISC based on written information, which has not been used. The amendment to §187.18 requires ISC panels to be composed of two members, including one public member, and one physician in the case of a case before the Medical Board; sets out more detailed standards for consideration of requests

to reschedule an ISC; requires information to be provided by a licensee at least 5 business days before the date of the ISC; clarifies the role of the Hearings Counsel; clarifies the procedure for private deliberations by the ISC panel; and clarifies and cleans up language of the rule. The amendment to §187.20 requires the Board to consider previous attempts to resolve enforcement matters when it does not approve a proposed settlement agreement and determines that further action is required. The amendment to §187.21 increases the number of ISC panelists from 1 to 2, except in certain circumstances, as required by statutory changes in SB 419. The repeal of §187.12 eliminates duplicative language regarding notice of ISC that is included in §187.16. The repeal of §187.17 eliminates the rule that provides unused procedures for ISCs based on written information. The amendment to §187.23 provides that the rules of the State Office of Administrative Hearings shall govern the procedures of contested cases, except when the Board's rules provide the Board's interpretation of the Medical Practice Act and identifies statutory authority in the Administrative Procedure Act for interim appeals. The amendment to §187.26 deletes provisions for notice by publication so that SOAH rules will apply to service of Notice of Adjudicative Hearing. The amendment to §187.27 eliminates requirements that written answer in contested case must admit or deny allegations. The amendment to §187.28 eliminates Board procedures for discovery in contested cases, so that it is clear that SOAH Rules apply. The amendment to §187.29 clarifies language regarding mediation and eliminate conflicts with SOAH Rules. The amendment to §187.30 clarifies that contested case hearings must be recorded by a court reporter and eliminates confusion with SOAH rules. The amendment to §187.31 eliminates provision in conflict with SOAH Rules and clarify matters that deal with interpretations of Medical Practice Act. The amendment to §187.33 eliminates provisions in conflict with SOAH Rules. The repeal of §187.32 and §187.34 eliminates provisions in conflict with SOAH Rules. The amendment to §187.36 clarifies and cleans-up language regarding interlocutory appeals and certified questions. The amendment to §187.37 incorporates specific statutory language regarding the Board changing a finding of fact or conclusion of law recommended by an administrative law judge, as required by SB 419; sets out the Board's interpretation of §164.007(a), requiring the Board to determine the charges on the merits. The amendment to §187.42 clarifies standards and procedure for Board members to recuse themselves from voting on any enforcement matter. The amendment to §187.43 clarifies that petitions for modification or termination of a Board disciplinary order will be heard before an ISC panel and eliminate the unworkable requirement that petitions for modification and termination must be filed 20 days prior to a hearing, when a hearing has not been set. New §187.45 provides that any probationer may be required to appear before Board representatives to report on compliance and progress under the Board's order. The amendment to §187.56 makes a grammatical correction by changing "which" to "whom" and sets out statutory authority for telephone conference call for temporary suspensions.

Michele Shackelford, General Counsel, Texas Medical Board, has determined that for the first five-year period the amendments, repeals and new rule are in effect there will be no fiscal implications to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the sections as proposed. There may be an effect to individuals required to comply with new §187.45 in that probationers may be required to incur expenses to travel to appear before the Board.

Ms. Shackelford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be conforming rules to statutory changes in SB 419; clarifying rules to provide that agreements must be in writing in any proceeding; conforming rules to new statutory requirements; providing that refunds may be ordered to be paid to patients; clarifying language of rule regarding tolling; providing more clarity and cleaning up language of rules; consolidating notice requirements for ISC into one section; expediting the processing of board orders on administrative violations of the Medical Practice Act by reducing the necessity for an ISC to be conducted; assures that licensees are only required to respond to reasonable requests for records, documents, or other information, rather than any; clarification and general clean-up of rules; elimination of procedures that have not been used; eliminating confusion regarding whether the Board's procedural rules or SOAH's procedural rules prevail in contested case hearings to assure that SOAH's rules prevail, except when the Board has interpreted the Medical Practice Act; eliminating confusion in which agency's rules apply to notice of hearings in contested cases; eliminating the necessity to file detailed answer, admitting and denying specific allegation, in contested case hearing; eliminating confusion regarding which agency's rules apply to a contested case hearing, a mediation of disputed issues in an enforcement case, procedures in a contested case and proposals for decision and exceptions to proposals for decision; providing clarity by following statutory language from the Administrative Procedure Act regarding the authority of the Board to change a finding of fact or conclusion of law recommended by an administrative law judge, as required by SB 419; clarification that the Board interprets §164.007(a) to require the Board to determine the appropriate sanction to be applied in a case and that the administrative law judges recommendation of sanction should not be included in a finding of fact or conclusion of law; providing clarity and removing ambiguous language regarding the standards and procedure by which a Board member may or should recuse themselves from voting on any enforcement matter; providing clarification that an ISC panel will consider any petition for modification or termination of a disciplinary order of the Board and eliminates the unworkable requirement that a licensee must file a petition for modification or termination on the 20th day before an uncertain date; allowing the Board to require the appearance of probationers to monitor compliance with a Board order and clarifying specific statutory authority. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

## SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

### 22 TAC §§187.1, 187.2, 187.4, 187.9

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The following statutes, articles or codes are affected by this proposal: Sections 187.1, 187.2--§151.002(a)(1), Texas Occupations Code; Section 187.4--none; Section 187.9--§164.206, Texas Occupations Code.

#### §187.1. Purpose and Scope.

(a) Purpose. The purpose of this chapter is to provide a system of procedures for practice before the Texas Medical [State] Board [of Medical Examiners], the Texas Physician Assistant Board, and the Texas State Board of Acupuncture Examiners, and to govern the formal disposition of contested cases at SOAH, as required by Section 164.007(a) of the Act, that will promote just and efficient disposition of proceedings and public participation in the decision-making process. The provisions of this chapter shall be given a fair and impartial construction to obtain these objectives.

#### (b) Scope.

(1) This chapter shall govern the initiation, conduct, and determination of proceedings required or permitted by law, including proceedings referred to SOAH.

(2) This chapter shall not be construed so as to enlarge, diminish, modify, or otherwise alter the jurisdiction, powers or authority of the board, board staff, or the substantive rights of any person.

(3) This chapter shall control the practice and procedure of all board proceedings to include SOAH proceedings.

#### §187.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--Tex. Occ. Code Ann. Title 3 Subtitle B, for physicians; Tex. Occ. Code Ann. Chapter 204 for physician assistants; Tex. Occ. Code Ann. Chapter 205 for acupuncturists; and Tex. Occ. Code Ann. Chapter 206 for surgical assistants.

(2) Address of record--The last mailing address of each licensee or applicant, as provided to the agency pursuant to the Act.

(3) Administrative law judge (ALJ)--An individual appointed to preside over administrative hearings pursuant to the APA.

(4) Agency--The divisions, departments, and employees of the Texas Medical [State] Board [of Medical Examiners], the Texas Physician Assistant [State] Board [of Physician Assistant Examiners], and the Texas State Board of Acupuncture Examiners.

(5) APA--The Administrative Procedure Act, Texas Government Code, Chapter 2001 as amended.

(6) Applicant--A person seeking a license from the board.

(7) Attorney of record--A person licensed to practice law in Texas who has provided staff with written notice of representation.

(8) Authorized representative--A person who has been designated in writing by a party to represent the party at a board proceeding or an attorney of record.

(9) Board--The Texas Medical [State] Board [of Medical Examiners] for physicians and surgical assistants, the Texas State Board of Acupuncture Examiners for acupuncturists, and the Texas Physician Assistant [State] Board [of Physician Assistant Examiners] for physician assistants.

(10) Board member--One of the members of the board appointed pursuant to the Act.

(11) Board proceeding--Any proceeding before the board or at which the board is a party to an action, including a hearing before SOAH.

(12) Board representative--a board member or district review committee member who sits on a panel at an informal proceeding.



(13) Complaint--Pleading filed at SOAH by the board alleging a violation of the Act, board rules, or board order. The word "complaint" is also used in this rule in the context of complaints made to the board as provided in Section 153.012 of the Act.

(14) Contested case--A proceeding, including but not restricted to licensing, in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for an administrative hearing to be held at SOAH.

(15) Default Order--A board order in which the factual allegations against a party are deemed admitted as true upon the party's failure to file a timely answer to a Complaint or to appear at a properly noticed SOAH hearing.

(16) Executive director--The executive director of the agency, the authorized designee of the executive director, or the secretary of the board if and whenever the executive director and authorized designee are unavailable.

(17) Formal board proceeding--any proceeding requiring action by the board, including a temporary suspension hearing.

(18) Group practice--Any business entity, including a partnership, professional association, or corporation, organized under Texas law and established for the purpose of practicing medicine in which two or more physicians licensed in Texas are members of the practice.

(19) Informal board proceeding--Any proceeding involving matters before the board prior to the filing of a pleading at SOAH, to include, but not limited to show compliance proceedings, eligibility determinations, and informal resolutions.

(20) Informal show compliance proceeding and settlement conference (ISC)--A board proceeding that provides a licensee the opportunity to demonstrate compliance with all requirements of the Act and board rules and an opportunity to enter into an agreed settlement.

(21) License--Includes the whole or part of any board permit, certificate, approval, registration or similar form of permission authorized by law.

(22) Licensee--Any person to whom the agency has issued a license, permit, certificate, approval, registration or similar form of permission authorized by law.

(23) Licensing--The agency process relating to the granting, denial, renewal, cancellation, limitation, or reissuance of a license.

(24) Party--The board and each person named or admitted as a party in a SOAH hearing or contested case before the board.

(25) Person--Any individual, partnership, corporation, association, governmental subdivision, or public or private organization.

(26) Petition--Pleading filed at SOAH by the board alleging the reasons for the denial of a license.

(27) Pleading--A written document that requests procedural or substantive relief, makes claims, alleges facts, makes legal arguments, or otherwise addresses matters involved in a board proceeding.

(28) Presiding officer--The president of the board or the duly qualified successor of the president or other person presiding over a board proceeding.

(29) Probationer--A licensee who is under a board order.

(30) Probationer show compliance proceeding--A board proceeding that provides a probationer the opportunity to demonstrate compliance with the Act, board rules, and board order prior to the

board finding that a probationer is in noncompliance with the probationer's order.

(31) Register--The Texas Register.

(32) Rehabilitation Order--An agreed order entered pursuant to the authority of Section 164.201 of the Act.

(33) Respondent--A licensee or applicant who is the subject of disciplinary, non-disciplinary, or rehabilitative action by the board.

(34) Rule--Any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of this board. The term includes the amendment or repeal of a prior section but does not include statements concerning only the internal management or organization of the agency and not affecting private rights or procedures. This definition includes substantive regulations.

(35) Secretary--The secretary-treasurer of the board.

(36) SOAH--The State Office of Administrative Hearings.

(37) SOAH hearing--A public adjudication proceeding at SOAH.

(38) SOAH rules--1 Texas Administrative Code §155.1 et. seq.

(39) Texas Public Information Act--Texas Government Code, Chapter 552.

(40) Witness--Any person offering testimony or evidence at a board proceeding.

#### *§187.4. Agreement to be in Writing.*

No stipulation or agreement between the parties, with regard to any matter involved in any board proceeding shall be enforced unless it shall have been reduced to writing and agreed to by the parties or their authorized representatives, or unless it shall have been dictated into the record by them during the course of a SOAH hearing, ~~or a~~ deposition, or other proceeding of record, or incorporated in a motion bearing their written approval. This section does not limit a party's ability to waive, modify or stipulate any right or privilege.

#### *§187.9. Board Actions.*

(a) Pursuant to the Act, §164.001, and in accordance with Chapter 190 of this title (relating to Disciplinary Guidelines), the board, upon finding that an applicant or licensee has committed a prohibited act under the Act or board rules, or has violated an order of the board, shall enter an order imposing any action authorized by law:

(b) The board may stay enforcement of any order and place the person on probation. The board shall retain the right to vacate the probationary stay and enforce the original order for noncompliance with the terms of the probation or to impose any other disciplinary action authorized by law in addition to or instead of enforcing the original order.

(c) An agreed order, including a private nondisciplinary rehabilitation order, may impose actions as agreed to by the board and person subject to the order.

(d) An agreed order may include a refund, as provided by Sec. 164.206, Tex. Occ. Code. A refund may only be ordered to be paid to a patient of the licensee who is the subject of disciplinary action and shall not exceed the amounts that the patient paid directly to the licensee related to medical services provided by the licensee that are the subject of the complaint involved. Refunds may be ordered to be paid by the licensee directly to a patient, with proof of payment provided

to the board to show compliance with the board order. As used in this subsection, "patient" includes the legal guardian of a patient, but does not include any third-party payer.

(e) ~~[(d)]~~ The time period of an order shall be extended for any period of time in which a person subject to an order subsequently resides or practices outside the State of Texas, ~~[or]~~ for any period during which the person's license is subsequently cancelled for nonpayment of licensure fees, or as provided in a board order. This subsection does not apply to *locum tenens* practice if the licensee maintains a residence in this state and fully cooperates with his compliance officer.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Executive Director

Texas Medical Board

Earliest possible date of adoption: December 4, 2005

For further information, please call: (512) 305-7016



## SUBCHAPTER B. INFORMAL BOARD PROCEEDINGS

### 22 TAC §§187.10, 187.14 - 187.16, 187.18, 187.20, 187.21

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The following statutes, articles or codes are affected by this proposal: Section 187.10--none; Section 187.14--§164.0025, Texas Occupations Code; Section 187.15--§153.007, Texas Occupations Code; Section 187.16--§164.003, Texas Occupations Code; Section 187.18--§164.0032, Texas Occupations Code; Section 187.20--§164.0032(h), Texas Occupations Code; Section 187.21--§164.0031, Texas Occupations Code.

#### §187.10. Purpose.

The purpose of informal board proceedings is to provide ~~[notice to]~~ an applicant or licensee who is the subject of alleged violations of board rules or the Act, or who has been denied or found ineligible [the basis of denial of or ineligibility] for licensure, an opportunity ~~[for an applicant or licensee]~~ to show compliance~~[-]~~ and ~~[an opportunity]~~ for informal disposition of the matter.

#### §187.14. Informal Resolution of Disciplinary Issues Against a Licensee.

Pursuant to §§164.003 - .004 of the Act and §§2001.054 - .056 of the APA, the following rules shall apply to informal resolution:

(1) Any matter within the board's jurisdiction may be resolved informally by agreed order, dismissal, or default.

(2) Prior to the imposition of any disciplinary action against a licensee, the licensee shall be given the opportunity to show compliance with all the requirements of the law for the retention of an unrestricted license before one or more board representatives.

(3) If a determination is made by the board representatives that there has been no violation, the board representatives may recommend that the complaint or allegations be dismissed.

(4) If a determination is made by the board representatives that a licensee has violated the Act, board rules, or board order, the board representatives may make recommendations for resolution of the issues to be reduced to writing and processed in accordance with §187.19 of this title (relating to Resolution by Agreed Order).

(5) An opportunity for the licensee to show compliance shall not be required prior to a temporary suspension under §164.059 of the Act, or in accordance with the terms of an agreement between the board and a licensee.

(6) Any modification made by the board to any agreed order must be approved by the licensee.

#### (7) Informal Resolution of Administrative Violations.

(A) Pursuant to §164.0025 of the Act, the Quality Assurance ("QA") Committee of board employees may recommend dismissal or an agreed settlement of any complaint, except a complaint that relates directly to patient care. For purposes of this section, the term "relates directly to patient care" means that there is an allegation regarding the standard of care, sexual misconduct affecting patients, or any harm to patients resulting from intemperate use of drugs or alcohol.

(B) The QA Committee shall include the Executive Director or the Deputy Executive Director, the manager of the investigation division, and the manager of the legal division.

(C) The QA Committee shall review all complaints that are referred by the investigation division to determine whether

(i) the complaint should be accepted for legal action,  
and

(ii) the complaint relates directly to patient care.

(D) If the QA Committee determines that an offer of settlement should be made regarding a complaint that does not relate directly to patient care, the offer of settlement shall be presented to the licensee.

(i) If the licensee accepts the offer of settlement, the signed proposed agreed order shall be presented to the board at a public meeting for approval.

(ii) If the licensee fails to timely accept the offer of settlement, or if the licensee requests that an ISC be held, the offer shall be deemed to be rejected and an ISC shall be scheduled.

#### §187.15. Investigation and Collection of Information.

Failure of a licensee to comply with reasonable ~~[within the prescribed time with all]~~ requests to produce records, documents, or other information requested by board staff in connection with an informal board proceeding shall constitute unprofessional and dishonorable conduct.

#### §187.16. Informal Show Compliance Proceedings (ISCs).

(a) Notice of the time, date and place of the ISC shall be extended to the licensee and the complainant(s) in writing, by hand delivery, regular mail, certified mail - return receipt requested, overnight or express mail, courier service, or registered mail, to the address of record of the complainants and the address of record of the licensee or the licensee's authorized representative to be sent by the Board at least 30 [thirty] days prior to the date of the ISC. The notice shall include:

(1) a statement that the licensee has the opportunity to attend and participate in the informal meeting;

(2) a written statement of the nature of the allegations; and

(3) a copy of the information the board intends to use at the ISC. If the complaint includes an allegation that the licensee has violated the standard of care, the notice shall also include a copy of the Expert Physician Reviewers' Report, prepared in accordance with Section 154.0561, Tex. Occ. Code. In addition, the board will also provide the licensee with the rules governing the proceeding and guidelines to assist the licensee to prepare for the ISC, including requirements regarding requests to reschedule the ISC. The information required by this section may be given in separate communications at different times, provided all of the information has been provided at least 30 days prior to the date of the ISC; the deadline for submitting any additional material for presentation to the board representatives; and a brief written statement of the nature of the allegations to be addressed at the ISC].

(b) If the information that the board intends to use at the ISC includes only excerpts of any medical record, the licensee has a right to obtain the complete medical record within 14 days after a request is mailed.

(c) ~~[(b)]~~ A licensee may be asked to respond in writing to questions from the board staff concerning the matter. If the licensee is asked to respond to written questions, the licensee shall respond within 14 days after the notice is mailed. The licensee's response may include any additional information the licensee wants the board representatives to consider.

(d) ~~[(e)]~~ All information provided by the board staff and the licensee shall be provided to the board representatives for review prior to the board representatives making a determination of whether the licensee has violated the Act, board rules, or board order.

~~[(d)]~~ Upon receiving the notice of allegations, the licensee must submit written notification to the board within 14 days of the mailing, indicating whether the licensee has chosen to waive an opportunity to show compliance, have a determination of compliance be made based upon the written information submitted to the board representatives as set out in §187.17 of this title (relating to Informal Show Compliance Proceeding Based on Written Information), or attend an ISC as set out in §187.18 of this title (relating to Informal Show Compliance Proceeding and Settlement Conference Based on Personal Appearance). The board shall assume that if a licensee fails to provide any written response that the licensee has elected to personally appear at an ISC.]

~~[(e)]~~ Notwithstanding any other provision of this section, the board representatives may request that a licensee personally appear at an ISC.]

(e) ~~[(f)]~~ All informal show compliance proceedings shall be scheduled not later than the 180th day after the date the board's official investigation of the complaint is commenced ~~[filed with the board]~~, unless good cause is shown by the board for scheduling the informal meeting after that date. For purposes of this subsection:

(1) "Scheduled" means the act of the agency to reserve a date for the ISC.

(2) "Good cause" shall have the meaning set forth in Section 179.6 of this title (relating to Time Limits).

*§187.18. Informal Show Compliance Proceeding and Settlement Conference Based on Personal Appearance.*

(a) ~~After [Upon]~~ referral of an investigation to the agency's legal division, the Hearings Coordinator of the board shall schedule an ISC before an ISC Panel, composed of two ~~[with one]~~ or more board representatives to be held after proper notice to the licensee. One board representative must be a public member. If the matter is before the Medical Board, at least one board representative must be a physician member.

(b) Requests to reschedule the ISC by a licensee must be in writing and shall be referred to the Hearings Counsel for consideration. To avoid undue disruption of the ISC schedule, the Hearings Counsel should grant a request only after conferring with the Hearings Coordinator and consideration of the following guidelines: [may be granted only if the licensee is able to show that extraordinary circumstances exist such as illness, death or natural disaster, which suggest the need to reschedule the ISC. The licensee must submit a written request within five days of receipt of the notice that includes the reasons for the requested continuance. The Hearings Counsel to the board shall make the determination as to whether to grant a request to reschedule.]

(1) A request to reschedule an ISC that is received by the agency:

(A) within five business days after the licensee receives notice of the date of the ISC should be granted if the request states a reasonable basis, the licensee has taken steps to meet the original schedule, and the licensee's conflict cannot reasonably be avoided.

(B) more than five business days after the licensee receives notice of the date of the ISC and more than 30 days before the scheduled date for the ISC should be granted only if:

(i) a request by the licensee to reschedule the ISC has not previously been granted;

(ii) a reasonable basis is stated;

(iii) there would be hardship to the licensee if a request is not granted;

(iv) the nature of the allegations does not present a continuing threat to the public welfare; and

(v) rescheduling can be accommodated without significant disruption of the ISC schedule.

(C) within 30 days before the scheduled date for the ISC should not be granted unless paragraphs (2) or (3) of this subsection, apply.

(2) A request received by the agency at any time because of an extraordinary event or circumstance should be granted, provided the request is received by the agency within a reasonable time after the occurrence of the event or circumstance.

(3) A request based on the failure of the agency to send notice at least 30 days before the date of the ISC, as required by Section 164.003 of the Act, shall be granted, provided the request is received by the agency within five business days after the late notice is received by the licensee.

(c) Prior to the ISC, the board representatives shall be provided with the information sent to the licensee by the board staff and all information timely received in response from the licensee. Information must be received from the licensee at least five business days prior to the ISC.

(d) An ISC may be conducted by only one panelist if:

(1) the ISC is related to an order of the board, such as to show compliance, a probation appearance, or a request for termination or modification, or

(2) the affected licensee waives the requirement that at least two panelists conduct the ISC. In such situations, the panelist may be either a physician, physician assistant, or acupuncturist (depending on the licensee involved) or a member who represents the public.

(e) ~~[(f)]~~ The board representatives [ISC] shall allow:

(1) the board staff to present a summary [~~synopsis~~] of the allegations and the facts that the board staff reasonably believes could be proven by competent evidence at a formal hearing;

(2) the licensee to reply to the board staff's presentation and present facts the licensee reasonably believes could be proven by competent evidence at a formal hearing;

(3) presentation of evidence by the board staff and the licensee, which may include medical and office records, x-rays, pictures, film recordings of all kinds, audio and video recordings, diagrams, charts, drawings, and any other illustrative or explanatory materials which in the discretion of the board representatives are relevant to the proceeding;

(4) representation of the licensee by an authorized representative;

(5) presentation of oral or written statements by the licensee or authorized representative;

(6) presentation of oral or written statements or testimony by witnesses;

(7) questioning of the witnesses in a manner prescribed by the panel;

(8) questioning of the licensee;

(9) closing statement by the licensee; [rebuttal by board staff; and]

(10) closing statement by the board's staff; and

(11) ~~[(40)]~~ upon request by board representatives, the board staff may propose appropriate disciplinary action and the licensee or authorized representative may respond.

(f) ~~[(e)]~~ The board representatives, board staff, the licensee, and the licensee's authorized representative shall be present during the presentation of statements and testimony during the ISC.

(g) ~~[(f)]~~ Notwithstanding subsection (f) ~~[(e)]~~ of this section, the board representatives may allow a witness to testify outside the physical presence of the licensee to protect the person from harassment and/or undue embarrassment, for personal safety concerns, or for any other demonstrated and legitimate need. If such testimony is allowed, arrangements will be made to allow the licensee to listen to the testimony contemporaneously as it is given.

(h) ~~[(g)]~~ All evidence that a licensee wishes the board representatives to consider at the ISC must be received by ~~[submitted]~~ to the board at least five business ~~[seven]~~ days before the ISC. The board representatives may refuse to consider any evidence not submitted in a timely manner without good cause. If the board representatives allow the licensee to submit late evidence, the representatives may reschedule and/or recommend ~~[assess]~~ an additional administrative penalty for the late submission.

(i) ~~[(h)]~~ A board attorney, who has not been involved with the preparation of the case, shall be designated as the ~~[The]~~ Hearings Counsel and ~~[of the board]~~ shall be present during the ISC and the panel's deliberations to advise the panel on legal issues that arise during the ISC. The Hearings Counsel shall be permitted to ask questions of participants in the ISC to clarify any statement made by the participant. The Hearings Counsel shall provide to the ISC panel a historical perspective on comparable cases that have appeared before the board, keep the proceedings focused on the case being discussed, and ensure that the board's employees and the licensee have an opportunity to present information related to the case ~~[witnesses, the board staff, the attorney for the licensee and other participants in the hearing]~~.

(j) ~~[(i)]~~ At the ISC, the board representatives shall attempt to resolve disputed matters and the representatives may call upon the board staff at any time for assistance in conducting the ISC.

(k) ~~[(j)]~~ The board representatives shall prohibit or limit access to the board's investigative file by the licensee, the licensee's authorized representative, the complainant(s), witnesses, and the public consistent with Act, §164.007(c).

(l) ~~[(k)]~~ Although the participants may make notes, mechanical or electronic recordings shall not be made of the ISC, settlement discussions, or mediation efforts.

(m) ~~[(l)]~~ The ISC shall be informal and shall not follow the procedures established under this title for formal board proceedings.

(n) ~~[(m)]~~ At the conclusion of the presentations, the board representatives shall deliberate in order to make recommendations for the disposition of the complaint or allegations. An employee of the board who participated in the presentation of the allegation or information gathered in the investigation of the complaint, the affected licensee, the licensee's authorized representative, the complainant, the witnesses, and members of the public may not be present during the deliberations. [During the deliberations by the board representatives, the board representatives shall exclude, except with agreement of the licensee, the board staff who presented the allegations and facts related to the complaint against the licensee, the licensee, the licensee's authorized representative, the complainant(s), witnesses, and the general public.] The Hearings Counsel may be present only to advise the panel on legal issues and to provide information on comparable cases that have appeared before the board [of the board shall be available for assistance during deliberations].

(o) ~~[(n)]~~ The board representatives may:

(1) make recommendations to dismiss the complaint or allegations.

~~[(o)]~~ The dismissal of any matter is without prejudice to additional investigation and/or reconsideration of the matter at any time; [-]

(2) ~~[(p)]~~ make recommendations regarding an agreed order and ~~[Upon a determination by the board representatives that the licensee has violated the Act or board rules, the board representatives may]~~ propose resolution of the issues to the licensee to be reduced to writing and processed in accordance with §187.19 of this title (relating to Resolution by Agreed Order); [-]

(3) defer the ISC, pending further investigation;

(4) direct that a formal Complaint be filed with SOAH, if the ISC Panel determines that no agreed settlement is likely to be successful; or

(5) recommend to the President of the board that a Disciplinary Panel be convened to consider the temporary suspension or restriction of the licensee's license, if the ISC Panel determines that the licensee poses a continuing threat to the public welfare.

§187.20. Board Action.

(a) Following the acceptance and execution by the licensee or applicant of the settlement agreement, the agreement shall be submitted to the board for approval.

(b) The following relate to the consideration of an agreed disposition by the board:

(1) Upon an affirmative majority vote of members present to approve an agreed order, the president of the board or of the officer presiding at such meeting shall sign and enter the agreed order and the action shall be referenced in the minutes of the board.

(2) If the board does not approve a proposed settlement agreement, the licensee or applicant shall be so informed and the matter shall be referred to board staff for appropriate action that may include dismissal, closure, further negotiation, further investigation, an additional informal resolution conference or a SOAH hearing. In determining the appropriate further action to be taken, the board shall consider previous attempts to resolve the matter. The board must specify their rationale for the rejection of the proposed settlement agreement that shall be referenced in the minutes of the board.

(3) The board may approve the proposed agreed order with specified modifications, which shall be referenced in the minutes of the board. The revised proposed agreed order shall be presented to the licensee for acceptance within the time period prescribed. Upon acceptance, the president of the board or the officer presiding at the meeting shall sign and enter the agreed order.

(c) To promote the expeditious resolution of any complaint or matter relating to the Act or of any contested case, with the approval of the executive director or a member of the Executive Committee or the Disciplinary Process Review Committee, board staff may present a proposed settlement agreement for licensees to the board for consideration and acceptance without conducting an informal show compliance proceeding.

*§187.21. Board and District Review Committee Members Participation.*

(a) Two [One] or more members of the board or the district review committee shall conduct an ISC as the board's representatives, except as provided in Section 187.18(d), of this title (relating to Informal Show Compliance Proceeding and Settlement Conference Based on Personal Appearance). The senior [When a] board member [and district review committee member conduct an informal show compliance proceeding, the board member] shall serve as chair of the proceeding. In the event that the representatives consist only of [two board members or two] district review committee members, the senior [representative who has seniority on the board or] committee member shall serve as the chair of the proceeding. [In the event a public member of the board or of the district review committee serves as the only board representative in such a proceeding, a board consultant or the board's executive director, if the executive director is a physician, may, with the approval of the licensee, serve as a medical advisor to the representative.]

(b) To the extent possible, board members and district review committee members are required to serve as representatives at informal show compliance proceedings an equal number of times during a calendar year.

{(c) In the event a board member or district review committee member has a complaint regarding the frequency or infrequency of service as a representative at informal show compliance proceedings, the complaint may be routed in writing to the director of enforcement for the board who shall then bring the complaint to the attention of the president of the board for resolution.}

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 24, 2005.

TRD-200504786

Donald W. Patrick, MD, JD  
Executive Director  
Texas Medical Board

Earliest possible date of adoption: December 4, 2005  
For further information, please call: (512) 305-7016

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## 22 TAC §187.12, §187.17

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Medical Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeals are proposed under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

No other statutes, articles or codes are affected by the proposal.

*§187.12. Notice.*

*§187.17. Informal Show Compliance Proceeding Based on Written Information.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER C. FORMAL BOARD PROCEEDINGS AT SOAH

### 22 TAC §§187.23, 187.26 - 187.31, 187.33

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The following statutes, articles or codes are affected by this proposal: Sections 187.23, §187.27, §187.28, §187.30, 187.33--§164.007, Texas Occupations Code; Section 187.26--§164.003, Texas Occupations Code; Section 187.29--none; Section 187.31--§164.007, Texas Occupations Code and 164.0071, Texas Occupations Code.

*§187.23. General Provisions.*

(a) SOAH hearings of contested cases shall be conducted in accordance with the Act, the APA, SOAH rules, and board rules. In the event of a conflict, the Act shall prevail over any other statute or rule, the APA shall prevail over SOAH rules, and SOAH rules shall prevail over the rules of the board, except when board rules provide

the board's interpretation of the Act. If SOAH rules are silent on an issue addressed by this subchapter, the provisions of this subchapter shall be applied [by an ALJ assigned by SOAH. Jurisdiction over the case is acquired by SOAH when board staff files a Request to Docket Case form accompanied by legible copies of all pertinent documents, including but not limited to the Complaint, Petition or other document describing the board action giving rise to the contested case].

(b) The ALJ has the authority under SOAH rules, Chapter 155, to issue orders, to regulate the conduct of the proceeding, rule on motions, establish deadlines, clarify the scope of the proceeding, schedule and conduct prehearing and posthearing conferences for any purpose related to any matter in the case, set out additional requirements for participation in the case, and take any other steps conducive to a fair and efficient process in the contested case, including referral of the case to a mediated settlement conference or other appropriate alternative dispute resolution procedure as provided by Chapter 2003 of the Government Code.

(c) Any person may file a motion to be admitted as a party upon showing of a justiciable interest.

(d) All documents are to be filed at SOAH [only] after it acquires jurisdiction. Copies of all documents filed at SOAH shall be contemporaneously filed with the Hearings Coordinator of the board.

(e) Because of the often voluminous nature of the records properly received into evidence by the ALJ, the party introducing such documentary evidence should paginate each exhibit and/or flag pertinent pages in each exhibit in order to expedite the hearing and the decision-making process.

(f) In accordance with the provisions of the APA, Section 2001.058(c), a party [Board staff] may file an interlocutory or interim appeal to the board requesting that the board vacate or modify an order issued by an ALJ [of an ALJ's ruling excluding evidence offered by board staff, or of any procedural ruling that staff believes is substantially prejudicial to the board. The board's determination on these matters shall be controlling].

[(g) Board staff may certify to the board any question concerning the following:]

[(1) procedural or evidentiary issues;]

[(2) the imposition of any sanction;]

[(3) evidentiary or procedural ruling by an ALJ that would be substantially prejudicial to the board;]

[(4) policy issues including, but not limited to:]

[(A) the board's interpretation of its rules and applicable statutes;]

[(B) which rules or statutes are applicable to a proceeding; and]

[(C) whether board policy should be established or clarified as to a substantive or procedural issue of significance of the proceeding;]

[(5) any other matter which is committed to the discretion or judgment of the board.]

(g) [(h)] Final argument by the parties, whether written or oral, shall proceed by allowing the party with the burden of proof to open and conclude. In disciplinary matters, board staff will make argument, the respondent/licensee will be permitted to make a reply argument, and board staff will be permitted to make rebuttal argument in that order.

In licensure matters, the respondent/applicant shall make argument, the board staff shall be permitted to make reply argument, and the respondent/applicant shall be permitted rebuttal argument, in that order.

(h) [(i)] Within the time line set out in SOAH rules, after the conclusion of the hearing, the ALJ shall prepare and serve on the parties a proposal for decision that includes the ALJ's findings of fact and conclusions of law.

(i) [(j)] After receiving the ALJ's findings of fact and conclusions of law, the board shall rule on the merits of the charges and enter an order.

*§187.26. Service in SOAH Proceedings.*

(a) Service of a notice of adjudicative hearing and Complaint shall be made by hand delivery, regular, registered or certified mail, courier service, or otherwise in accordance with the APA and the Rules of SOAH. The notice shall be delivered to the respondent at the address of record on file with the board. A certificate of service indicating service in the manner provided for in this subsection shall be prima facie evidence of proper service of notice of adjudicative hearing.

(1) Service by hand delivery shall be complete upon hand delivery to the respondent or respondent's agent at the respondent's address of record.

(2) Service by mail shall be complete upon deposit of the paper, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service.

(3) Service by courier service shall be complete upon deposit of the paper, enclosed in a properly addressed wrapper, in a depository under the care and custody of a courier service, with payment under a contract with the board.

[(b) If service of notice as prescribed by subsection (a) of this section is impossible or cannot be accomplished, then notice may be made through publication of a notice of hearing once a week for two successive weeks in a newspaper published in the county of the last known place of practice of the person entitled to notice if the county is known. If the person is not currently practicing in Texas as evidenced by information in the agency files, or if the last county of practice is unknown, publication shall be in a newspaper in Travis County. When publication of notice is used, the date of hearing may not be less than ten days after the date of the last required publication of notice. Proof of publication may be accomplished by affidavit of a representative or record custodian of the publisher indicating the required publication or by introduction and admission into evidence of copies of the required notices published for purposes of service.]

(b) [(c)] Service of other documents in contested cases pending before SOAH shall be governed by the rules of SOAH.

*§187.27. Written Answers in SOAH Proceedings and Default Orders.*

(a) Written Answers in SOAH Proceedings. As authorized by SOAH rules, 1 TAC §155.55(f) (relating to Rules of Procedures), a respondent is required to file a written answer, in accordance with the following:

(1) Within 20 days after the date that service of a notice of adjudicative proceeding and Complaint is complete, as provided in §187.26 of this title (related to Service in SOAH Proceedings), the respondent shall file a written answer with the State Office of Administrative Hearings and with the Hearings Coordinator of the board.

[(2) The written answer shall specifically admit or deny each factual and legal allegation made against the respondent. As to

any allegation, the answer may admit in part and deny in part, clearly stating the parts that are admitted and the parts that are denied. Any unreasonable denial of any allegation or part of an allegation shall constitute unprofessional and dishonorable conduct and shall be considered as an aggravating factor if a violation of the Act is found.}]

(2) [(3)] Upon the filing of a Notice of Adjudicative Hearing, the Hearings Coordinator for the board shall calculate the date that a written answer must be filed.

(b) Default Orders.

(1) If no written answer has been filed within 20 days after the date of service, [Upon the filing of a written answer or upon the expiration of the time that a written answer must be filed,] the Hearings Coordinator shall present the administrative record of the case to the Hearings Counsel for the board, including the Complaint and [; the notice of adjudicative hearing; and the written answer, if any]. The Hearings Counsel shall determine whether the notice was properly served [and whether the written answer reasonably complies with subsection (a)(2) of this section].

(2) In the event the Hearings Counsel determines that the notice of adjudicative hearing was properly served and that respondent has failed to timely file a written answer, as required by subsection [subsections] (a)(1) [and (a)(2)] of this section, the Hearings Counsel shall issue a Determination of Default, which shall be served on respondent and filed at SOAH. The Determination of Default shall specifically state the facts on which the Hearings Counsel has based the Determination of Default, request that the matter be abated or continued at SOAH pending informal disposition by the board, and summarize the requirements by which a Determination of Default or Default Order may be set aside, as provided in paragraphs (4) - [(6) and] (7) of this subsection.

[(3) The failure to file an answer that reasonably complies with subsection (a)(2) of this section shall be considered the failure to timely file a written answer.]

(3) [(4)] An answer received after a Determination of Default has been issued shall not be filed.

(4) [(5)] In the event that the respondent wishes to file an answer after a Determination of Default has been issued, but before a Default Order has been adopted by the board, the respondent must file a Motion to Set Aside the Determination of Default, which shall show the board that:

(A) the failure to timely file a written answer was not intentional or the result of conscious indifference but was due to a mistake or accident;

(B) respondent has a meritorious defense; and

(C) the setting aside of the Determination of Default will not cause any delay or injury to the board. [; and]

[(D) respondent is prepared to file an answer that fully complies with subsection (a)(2) of this section if the board sets aside the Determination of Default.]

(5) [(6)] The board shall consider the Complaint, the Determination of Default, and any Motion to Set Aside the Determination of Default, at a meeting of the board not less than twenty days after the date of the Determination of Default. If the board concurs with the findings in the Determination of Default, the board may deem the allegations in the Complaint as true and enter a Default Order.

(6) [(7)] In the event that the respondent wishes to file an answer after a Default Order has been entered by the board, but before the time for filing a Motion for Rehearing has expired, the respondent

must file a Motion for Rehearing to Set Aside Default Order, which shall show that:

(A) the failure to timely file a written answer was caused by fraud, accident, or wrongful act or official mistake of the board;

(B) the failure to timely file a written answer was not the result of respondent's fault or negligence; and

(C) the respondent has a meritorious defense. [; and]

(7) [(D)] [respondent is prepared to file an answer that fully complies with subsection (a)(2) of this section if the board grants the Motion for Rehearing.] The Motion for Rehearing shall be supported by affidavits and documentary evidence that present a prima facie case for a meritorious defense.

§187.28. Discovery.

(a) Parties to SOAH proceedings shall have reasonable opportunity and methods of discovery as described in the APA, §164.005 of the Act, and SOAH rules. [board rules; SOAH's rules and where specifically provided, the Texas Rules of Civil Procedure. Matters subject to discovery are limited to those that are relevant and material to, or reasonably calculated to lead to the discovery of, issues within the board's authority as set out in the Act. The forms of discovery shall include:]

[(1) Request for Disclosure. Not later than 20 days after receiving a written request from an opposing party, the responding party shall provide to the requesting party the information required by Rule 194.2, Tex. Rules of Civil Procedure. In addition, a Request for Disclosure may request the following:]

[(A) a preliminary list of the names and last known addresses and phone numbers of potential witnesses which the responding party reasonably anticipates may testify in its case-in-chief;]

[(B) a list or copy of all documents, records, photographs, moving pictures, films, videotapes, audio recordings, and other such material in the possession of the responding party which the responding party intends to offer in its case-in-chief, and a reasonable opportunity to inspect and copy such items;]

[(C) a list identifying all tangible items in the possession of the responding party which the responding party intends to offer in its case-in-chief, and a reasonable opportunity to inspect such items;]

[(D) the designation of any experts the responding party may call to testify in its case-in-chief. A party must designate all expert witnesses within 20 days of receipt of written request, unless otherwise determined by the ALJ upon motion by movant for good cause, and in no event less than 30 days prior to the date of hearing;]

[(E) documents and tangible items that have been made or prepared by any expert used for consultation, if such documents and tangible items form the basis, either in whole or in part, of the opinion of an expert who is expected to testify in the case; and]

(2) Request for Admissions and Genuineness of Documents as permitted by the rules of SOAH. "Genuineness" means that the documents are truly what they purport to be and are not false, fictitious, forged, spurious or counterfeit.]

(3) Interrogatories as permitted by the rules of SOAH, which must be sworn to in accordance with Texas Rules of Civil Procedure 197.2.]

[(4) Requests for Production as permitted by the rules of SOAH.]

**[(5) Depositions.]**

**[(A)]** The taking and use of depositions shall be governed by APA or by an agreement between the parties either on the record or in writing. Except by an agreement between the parties either on the record or in writing, depositions shall be conducted and completed no later than 19 days prior to the scheduled hearing date. Failure of a properly noticed witness who is a party to the case to attend a deposition for the purpose of taking the testimony of that party witness, or the failure of such a witness to attend such a deposition as agreed to by the parties on the record or in writing, may result in the imposition of the sanctions and remedies set forth in subsection (e) of this section.]

**[(B)]** A true copy of a transcript of a deposition taken in the case shall be admitted into evidence upon offer by any party. Such a copy shall be presumed to be authentic unless an objecting party is able to rebut such a presumption by a preponderance of competent evidence.]

**[(6)]** Deposition on Written Questions as provided for in the Texas Rules of Civil Procedure.]

**[(7)]** Other forms of discovery as provided for in the APA and by the rules of SOAH.]

**[(b)]** Documents and tangible items that are identified in a discovery response but not provided, shall be made available for inspection and copying at a reasonable time and place upon the written request of an opposing party.]

**[(b)]** **[(e)]** Remedies and Sanctions. Upon the failure to comply with a discovery request to the extent required by the APA, §164.005 of the Act, SOAH rules [board rule; the Act; SOAH Rules;] or SOAH Order, or as agreed to between the parties in a discovery agreement, the presiding ALJ should, after notice and hearing, make such orders in regard to the failure as are just, and such orders may include one or more of the following:

- (1) an order granting a continuance;
- (2) an order limiting or restricting the admissibility and use of evidence, to include exclusion of evidence or testimony;
- (3) an order for payment by a party of the actual travel, lodging, discovery expenses; hearing and court reporter costs; but not attorney fees, incurred by an opposing party as a result of the failure to comply with the discovery requirements;
- (4) an order imposing a scheduling order providing for discovery deadlines necessary to remedy the failure to comply discovery requirements;
- (5) an order for remedies and sanctions agreed to by the parties in writing or on the record;
- (6) an order disallowing further discovery of any kind or of a particular kind by the offending party;
- (7) an order holding that designated facts be considered admitted for purposes of the proceeding;
- (8) an order refusing to allow the offending party to support or oppose a designated claim or defense or prohibiting the party from introducing designated matters into evidence;
- (9) an order disallowing in whole or in part requests for relief by the offending party and excluding evidence in support of those requests; or
- (10) an order striking pleadings or testimony, or both, in whole or in part.

**[(d)]** Good Cause. Showing of good cause for failure to comply with a discovery request to the extent required by law, board rule, or as agreed to between the parties in a discovery agreement, may justify the imposition of less severe remedies or sanctions which might otherwise be imposed. Good cause shall include but is not limited to the following:]

**[(1)]** lack of knowledge of the existence of the information or material;]

**[(2)]** lack of access to or control of the information or material; and]

**[(3)]** act of nature.]

**[(e)]** Calculation of Deadlines and Time Limits. Discovery requests promulgated less than seven days prior to the scheduled hearing date shall not require a response unless agreed to by the parties on the record or in writing; however, other discovery requests promulgated at a time prior to the scheduled hearing date which by their timing allow less than the applicable deadline period for a response, shall not require a response until submitted for approval by motion of the requesting party to the ALJ and approved in whole or in part by order of the ALJ. Any such approval shall provide for one or more of the following:]

**[(1)]** modified response deadlines;]

**[(2)]** a continuance of the hearing date charged to the party requesting discovery; or]

**[(3)]** such reasonable requirements which are necessary to minimize any anticipated burden or inconvenience to the responding party as a result of the lateness of the discovery request.]

**[(f)]** Discovery Agreements. Discovery requirements governing SOAH proceedings may be modified by agreement of the parties either on the record or in writing without approval of an ALJ.]

**[(g)]** Official Notice. No later than three days prior to the date of the hearing, the parties shall exchange lists specifying all matters which each party will seek to have officially noticed at the hearing.]

**[(h)]** Final Witness List. No later than 10 days prior to the date of the hearing, the parties shall exchange final lists identifying the names and last known addresses and phone numbers of all witnesses each party intends to call to testify in its case-in-chief.]

**[(i)]** Waiver of Privilege/Confidentiality. The provision of any information or material in response to a discovery request that may be the subject of a privilege or confidentiality requirement under the Act or other applicable law, including but not limited to the physician/patient privilege, mental health provider privilege, and the physician peer review process, shall not constitute a waiver of any such privilege or confidentiality requirement with respect to other such information or material not provided.]

**[(j)]** Supplementation. Upon receiving new information or material, or upon otherwise determining that an inaccuracy exists in a previous discovery response, each party shall supplement such responses as soon as practicable.]

**§187.29. Mediated Settlement Conferences.**

(a) In an effort to expeditiously resolve disputed issues [outstanding Complaints], mediation [of Complaints or Petitions] may be held through SOAH in compliance with §155.37 of SOAH rules. [For any such proceeding:]

**[(1)]** SOAH will provide a minimum of 30 days notice of any mediated settlement conference (MSC). In no event shall the MSC



be held later than 30 days before the scheduled hearing unless agreed to by the parties.}]

[(2)] To the extent possible any MSC should be held soon after the Complaint or Petition is filed and before extensive discovery is initiated. If a party opposes a MSC, SOAH shall consider whether the request for the MSC was timely made.}]

[(3)] Any ordered MSC will not stay discovery unless agreed to by the parties.}]

(1) [(4)] Board members and District Review Committee (DRC) members are not parties to actions pending before SOAH, and accordingly will not be ordered or expected to attend MSCs before SOAH. Board members and DRC members who attended the informal show compliance proceeding or Licensure Committee hearing will be invited by board staff to attend the MSC. If the board and DRC members who attended the informal show compliance proceeding, or the Licensure Committee members are unable to attend the MSC, then other members of the board and DRC may be invited to attend the MSC. In appropriate cases, board staff will make every effort to have a physician-member present.

(2) [(5)] All proposed mediated agreed orders are not considered final until they are approved by the board.

(3) [(6)] All mediated agreed orders shall be in writing and shall contain findings of facts, conclusions of law and board actions consistent with §187.9 of this title (relating to Board Actions).

(b) The costs of mediation shall be born equally by the parties, unless proof through affidavit and other reliable records such as tax returns show that a party is incapable of paying part of the costs of mediation.

#### §187.30. Reporter and Transcripts.

[(a)] Recording by a court reporter. Each contested hearing shall [may] be recorded. Any recording of contested case proceedings shall be conducted in accordance with §§2001.059 - .060 of the APA and §155.43 of SOAH rules.

[(b)] Costs. A stenographic reporter may sell copies of a transcript. If the respondent in the proceedings requests the original record of the testimony and evidence of a disciplinary hearing, the costs for the original record shall be borne by the respondent. When no party requests a transcript, but the ALJ requests a court reporter to prepare a transcript, SOAH shall bear the cost of any transcript requested by the ALJ unless the agency agrees to pay the cost or assess the cost as allowed. Any subsequent copies of the record shall be borne by any person requesting same.}]

[(c)] Corrections. Suggested corrections to the transcript of the record may be offered within 10 days after the transcript is filed in the proceeding, unless the ALJ shall permit suggested corrections to be offered thereafter. Suggested corrections shall be served in writing upon each party of record, the official reporter, and the ALJ. If suggested corrections are not objected to, the ALJ will direct the corrections to be made and the manner of making them. In case the parties disagree on suggested corrections, they may be heard by the ALJ which shall then determine the manner in which the record shall be changed, if at all.}]

#### §187.31. Evidence.

[(a)] Rules. The rules of evidence as applied in nonjury civil cases in the district courts of this state shall be followed, except that evidence inadmissible under those rules may be admitted if it meets the standards set out in the APA §2001.081, as discussed in this section. In all cases, irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible

of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The ALJ shall give effect to the rules of privilege recognized by law. Opportunity must be afforded all parties to respond and present evidence and argument of all issues involved.}]

[(b)] Objections. Objections to evidentiary offers shall be made and shall be noted in the record. Formal exceptions to rulings of the ALJ during a hearing shall be unnecessary. It shall be sufficient that the party at the time any ruling is made or sought shall have made known to the ALJ the action which he or she desires.}]

[(c)] Offer of proof. If evidence is excluded from the record by an exclusionary ruling of the ALJ the evidence may be included in the record by an offer of proof in accordance with the Rules of Evidence. An offer of proof shall be sufficient to preserve the evidence for review.}]

(a) [(d)] Medical [Physician's office] records. Medical [When subpoenaed by the board, unless stipulated by the parties, the office] records of patients shall be accompanied by [each patient have stapled thereto] an affidavit in the form approved and furnished by the board that contains the requisite elements to comply with the Texas Rules of Evidence, 902(10)(b), relating to form of affidavits.

(b) [(e)] Peer review proceedings.

(1) Pursuant to Section 164.0071 [H60.006] of the Act, a record, report, or other information that has been submitted to the board in accordance with Chapter 160 of the Act by a medical peer review committee, professional review body or any health care entity may be disclosed by Board Staff and shall be admitted into evidence as the basis for the opinion of an expert witness called by the board [for all purposes in a disciplinary hearing before the board or at SOAH]. The authorization to disclose such records in a disciplinary hearing, provided in Section 160.006(a)(1) and Section 164.0071 of the Act, creates a statutory exception to the hearsay rule, as stated in Article VIII, Texas Rules of Evidence. [Furthermore, such peer review records should be excepted from the hearsay rule in accordance with Rule 803(1), (6), and (8), Texas Rules of Evidence.}]

(2) In accordance with §160.009 of the Act, parties and witnesses can be required to produce documents and information. As provided in §160.0071(c) of the Act, however, a member of a peer review committee is not subject to subpoena and may not be compelled to provide evidence [testify] in a hearing or a deposition regarding medical peer review proceedings otherwise privileged pursuant to §160.007 of the Act.

(c) [(f)] Deferred adjudications. In accordance with §2001.081 of the APA and consistent with §§164.053(a)(1) and 164.053(b) of the Act, deferred adjudications are admissible as evidence that the respondent violated the law with which the respondent was charged and pled to, which gave rise to the deferred adjudication.

(d) [(g)] Documents. Subject to these requirements, if a hearing will be expedited and the interests of the parties will not be substantially prejudiced, any part of the evidence may be received in written form.

(1) Copies. Documentary evidence may be received in the form of copies or excerpts. On request, parties shall be given an opportunity to compare the copy with the original.

(2) Statement of Standard of Care. In lieu of pre-filed testimony in contested proceedings in which the quality or standard of medical care is at issue, the ALJ may require the parties to file a Statement of Standard of Care for each expert witness who will testify in the

party's case-in-chief. The Statement shall set forth the expert's opinion regarding:

(A) any standard of care that applies to the current case, and

(B) how the standard of care applies and/or was violated in the current case. The expert witness shall be subject to direct and cross-examination and the statement shall be admissible into evidence.

*§187.33. Proposals for Decision.*

[(a) Elements. In addition to any other requirement of the Act or the APA, the ALJ shall serve on the parties a proposal for decision that shall contain:]

[(1) a summary of the evidence adduced by each party;]

[(2) a statement of the ALJ's reasons for the proposed decision;]

[(3) findings of fact based on the evidence and on matters officially noticed;]

[(4) conclusions of law necessary to the proposed decision;]

[(5) a listing and explanation of all mitigating and aggravating circumstances necessary to a complete understanding of the case by the board; and]

[(6) a finding whether the board is authorized by the Act to take disciplinary action against the respondent.]

[(b) Service. When a proposal for decision is prepared, a copy of the proposal shall be served forthwith by the ALJ on each party, his or her attorney of record or representative, and the board. Service of the proposal for decision shall be in accordance with §187.26 of this title (relating to Service in SOAH Proceedings).]

[(c) Statutory statement. If findings of fact are stated in statutory language, each finding must be accompanied by a concise and explicit statement of the facts supporting the finding.]

[(d) Proposed findings.] In accordance with the APA, Section 2001.141(c), if [H] a party submits proposed findings of fact, the ALJ shall rule on each proposed finding, including a statement as to why any proposed finding was not included in the proposal for decision.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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For further information, please call: (512) 305-7016



**22 TAC §187.32, §187.34**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Medical Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeals are proposed under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The following statutes, articles or codes are affected by this proposal: §164.007, Texas Occupations Code.

*§187.32. Motions.*

*§187.34. Exceptions and Replies.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Donald W. Patrick, MD, JD  
Executive Director

Texas Medical Board

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For further information, please call: (512) 305-7016



**SUBCHAPTER D. FORMAL BOARD PROCEEDINGS**

**22 TAC §§187.36, 187.37, 187.42**

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The following statutes, articles or codes are affected by this proposal: Section 187.36--§164.007, Texas Occupations Code; Sections 187.37 and 187.42--§164.007(a), Texas Occupations Code.

*§187.36. Interlocutory Appeals and Certification of Questions.*

(a) Interlocutory appeals and certification of questions. Interlocutory appeals to the board and certification of questions filed pursuant to §187.23 of this title (relating to General Provisions of Formal Proceedings at SOAH) shall be filed with the hearings coordinator of the board and served on the respondent or authorized representative and the ALJ. The respondent or authorized representative and the ALJ shall be given ten days from the date of filing by board staff to file a written response with the Hearings Coordinator. The staff attorney, the respondent and authorized representative, and the ALJ may [board, at its discretion, may invite the staff member who filed the appeal or certified question, the ALJ, the respondent and authorized representative to] appear at a meeting to make oral argument on the appeal [or certified question].

(b) Abatement of proceeding. The ALJ shall abate the proceeding while a certified question or interlocutory appeal is pending.

(c) Board action. The board shall enter in the minutes of the meeting the board's decision on the [issue a written decision on the] certified question or interlocutory appeal [at the board meeting at which

the certified question or interlocutory appeal is heard]. A board decision on a certified question or interlocutory appeal is not subject to motion for rehearing.

(d) Judicial review. Nothing in this section shall be interpreted to affect a licensee's right to seek judicial review of any disciplinary action taken by the board against the licensee as provided by §164.009 of the Act.

*§187.37. Final Decisions and Orders.*

(a) Board action. A copy of the final decision or order shall be delivered or mailed to any party and to the attorney of record.

(b) Recorded. All final decisions and orders of the board shall be in writing and shall be signed by the president, vice-president, or secretary and reported in the minutes of the meeting. A final order shall include findings of fact and conclusions of law, separately stated.

(c) Imminent peril. If the board finds that imminent peril to the public's health, safety, or welfare requires immediate effect of a final decision or order in a contested case, it shall recite the finding in the decision or order as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final and appealable on the date rendered and no motion for rehearing is required as a prerequisite for appeal.

(d) Changes to findings of fact and conclusions of law.

(1) Reasons to Change Findings of Fact and Conclusions of Law [Recommendation]. The [In that the] board is charged [has been created] by the legislature to protect the public interest, is [as] an independent agency of the executive branch of the government of the State of Texas, and is [so as to remain as] the primary means of licensing, regulating and disciplining physicians and surgeons, physician assistants, and acupuncturists. Therefore, to [protect the public interest and] ensure that sound medical principles govern the decisions of the board, it is [shall hereafter be] the policy of the board to change a finding of fact or conclusion of law or to vacate or modify any proposed order of an ALJ only when the board determines [that the proposed order]:

(A) [(4)] that the ALJ did not [fails to] properly apply or interpret applicable law, board rules, written policies, or prior administrative decisions;

(B) [(2)] that a prior administrative decision on which the ALJ relied is incorrect or should be changed; or [is not supported by substantial evidence];

(C) [(3)] that a technical error in a finding of fact should be changed. [is based on unsound medical principles; or]

[(4)] includes the ALJ's recommendation for the appropriate sanction in a finding of fact or conclusion of law.]

(2) Recommendations regarding the appropriate sanction. Section 164.007(a) requires that, after receiving the ALJ's findings of fact and conclusions of law, the board shall determine the charges on the merits. The board interprets this requirement as imposing on the board the responsibility of assessing the proper sanction. While the board welcomes the recommendations of ALJs regarding the appropriate sanction, the board does not consider the findings of fact and conclusions of law to be appropriate for stating such recommendations. Therefore, sanction recommendations in the form of findings of fact and conclusions of law are considered to be an improper application of applicable law and these rules.

(3) [(e)] Changes Stated in Final Order [to proposed order]. If the board modifies, amends, or changes the ALJ's proposed findings of fact or conclusions of law, an order shall be prepared reflecting the specific reason and legal basis for each change made [the board's

changes, the board's justification(s) for the changes, and recorded in the minutes of the meeting].

(e) [(f)] Administrative finality. A final order or board decision is administratively final:

(1) upon a finding of imminent peril to the public's health, safety or welfare, as outlined in subsection (c) of this section;

(2) when no motion for rehearing has been filed within 20 days after the date the final order or board decision is entered; or

(3) when a timely motion for rehearing is filed and the motion for rehearing is denied by board order or operation of law as outlined in §187.38 of this title (relating to Motions for Rehearing).

*§187.42. Recusals.*

(a) Permissive Recusal. At [Before or during] any meeting [or portion of a meeting] of the board or board committee, a board member may choose to be recused from participating and [or] voting regarding [in] any [contested or uncontested] matter for any reason. The board member [and] shall not be required to state the basis for recusal, but may choose to state the basis in general terms if such a statement will not prejudice the rights of any party to a fair proceeding before the board or committee of the board. In the event a board member discloses a basis for recusal which could potentially prejudice the rights of any party to a fair proceeding, the presiding officer of the board or committee may cure any such prejudice by an instruction to board or committee members to not consider the statement during the course of the proceeding or during deliberations or discussions related to the proceeding.

(b) Standards for Recusal.

(1) [(b)] A board member should exercise sound discretion in choosing to be recused from participation and voting regarding [in] any [contested] matter [in which the board member is predisposed either for or against a party based on matters which are not part of the administrative record, and should choose to be recused from any matter in which the board member cannot set aside the predisposition whether the predisposition be for or against a party to the contested matter].

(2) A board member should choose to be recused if the board member:

(A) has a direct financial interest or relationship with any matter, party, or witness that would give the appearance of a conflict of interest;

(B) has a familial relationship within the third degree of affinity with any party or witness; or

(C) determines that he/she has knowledge of information that is not in the administrative record of a contested case and that he/she cannot set aside that knowledge and fairly and impartially consider the matter based solely on the administrative record.

(3) The fact that a board member participated in an ISC, a temporary suspension, or any other matter regarding a respondent shall not require the board member to be recused from any other matter, unless the board member determines that he or she cannot set aside knowledge of any information that is not in the administrative records and fairly and impartially consider the matter based solely on the administrative record.

(c) Motion for Disqualification by a Party.

(1) [(e)] Any party may move for the disqualification [or recusal] of a board member stating with particularity why the board member should not sit. The motion shall be made on personal knowl-

edge, shall set forth such facts as would be admissible in evidence, and shall be verified by affidavit.

(2) The motion must be filed with the Hearings Coordinator of the Board at least five business days prior to a board meeting at which the matter is on the agenda. The Hearings Coordinator shall immediately send a copy of the Motion for Disqualification to all board members.

(3) The board member sought to be disqualified [~~recused~~] shall determine whether the motion raises valid issues and whether the board member can fairly and impartially consider the matter based solely on the administrative record, setting aside knowledge of any information that is not in the administrative record. If the board member determines that he/she can fairly and impartially consider the matter and chooses not to be recused, the board member shall inform the board of that decision and shall be allowed to participate in all discussion and voting regarding the matter. The board is not required to take a vote on the motion [issue a decision as to whether he or she agrees that the recusal is appropriate or required before the board is scheduled to act on the matter for which the recusal is sought, or within 15 days after filing of the motion, whichever occurs first.]

(4) Consent to Participation. Failure to timely file a Motion for Disqualification regarding any board member as provided for in this subsection shall constitute a waiver of any objection and consent to participation by the member.

~~[(d) In any instance in which a ground for recusal is raised by any party to a proceeding, any member of the board, or any member of a board committee, the board member who may have a basis for recusal may generally explain the potential basis for recusal and obtain the oral or written consent of the parties to the proceeding to participate and vote in the pending matter.]~~

(d) ~~[(e)]~~ Upon exercising the right to be recused and announcement of the recusal in open session, any board member so recused shall be allowed to remain in the room during any portion of the related proceeding and shall be counted for purposes of determining a quorum, but shall not participate in any discussions, questioning, deliberations, or vote pertaining to the proceeding.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER E. PROCEEDINGS RELATING TO PROBATIONERS

### 22 TAC §187.43, §187.45

The amendment and new rule are proposed under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties;

regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The following statutes, articles or codes are affected by this proposal: Section 187.43--§164.007(a), Texas Occupations Code; Section 187.45--§164.101(c), Texas Occupations Code.

§187.43. *Proceedings for the Modification/Termination of Agreed Orders and Disciplinary Orders.*

(a) Unless the board order specifies that the order shall or will be modified or terminated upon the fulfillment of certain conditions or the occurrence of certain events, the decision to modify or terminate a board order shall be a matter for the exercise of sound discretion by the board.

(b) Modification or termination requests shall not be contested matters, but instead shall be matters to be ruled upon through the exercise of sound discretion by the board.

(c) If a board order sets out certain conditions or events for granting modification or termination of an order, the licensee shall have the burden of establishing that such conditions or events have taken place or been met.

(d) If by the terms of the order no specific conditions or events trigger the requirement that the petition be granted, the licensee has the burden of proof of demonstrating that one or more of the following factors should be considered for purposes of analyzing the merits of the petition and exercising sound discretion:

(1) whether there has been a significant change in circumstances which indicates that it is in the best interest of the public and the licensee to modify or terminate the order;

(2) whether there has been an unanticipated, unique or undue hardship on the licensee as a result of the board order which goes beyond the natural adverse ramifications of the disciplinary action (i.e. impossibility of requirement, geographical problems). Economic hardships such as the denial of insurance coverage or an adverse action taken by a medical specialty board are not considered unanticipated, unique or undue hardships;

(3) whether the licensee has engaged in special activities which are particularly commendable or so meritorious as to make modification or termination appropriate; and

(4) whether the licensee has fulfilled the requirements of the licensee's order in a timely manner and cooperated with the board and board staff during the period of probation or restriction.

(e) Probationers must be in compliance with the terms and conditions of their orders in order for the board to consider modification or termination of an order unless the modification or termination relates to the factors outlined in subsection (d)(2) of this section.

(f) Unless the terms of the board order specify otherwise, petitions for modification or termination shall be in writing and filed with the director of compliance for the board. The petition will then be scheduled before an ISC Panel for consideration. [20 days prior to a hearing on the matter.]

(g) Modification or termination requests may be made only once a year since the prior request for modification or termination unless a board order otherwise specifies, or upon an assertion in writing under oath by a petitioner indicating that a circumstance exists as described in subsection (d)(2) of this section. Upon receipt of the petition, the Director of Compliance shall determine whether such a request is valid and meets the requirements of subsection (d)(2) of this section. A finding by the Director of Compliance does not equate to such a finding by representatives of the board.

(h) For purposes of administrative convenience, modification or termination requests may be heard by the full board or by representatives of the board. If such a request is heard by representatives of the board, the representatives shall consist of at least one board member or one district review committee member. In the event such a request is heard by board representatives, the representatives of the board shall not be authorized to bind the board, but shall only make recommendations to the board regarding an appropriate disposition. The recommendation of such representatives shall be submitted to the full board for adoption or rejection in the form of an order drafted by board staff.

§187.45. Probationer Appearances.

A probationer may be required to appear before board representatives to report on compliance and progress under the order.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER F. TEMPORARY SUSPENSION PROCEEDINGS

### 22 TAC §187.56

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The following statutes, articles or codes are affected by this proposal: §164.059, Texas Occupations Code.

§187.56. Convening a Disciplinary Panel.

(a) The President of the board shall appoint a three-member disciplinary panel at the direction of any committee chair, any member of the Executive Committee, or any informal show compliance proceeding panel conveyed either verbally or in writing to the executive director or general counsel of the board.

(b) The disciplinary panel shall be composed of three members of the board, at least one of whom ~~which~~ must be a physician. The President of the board shall name a chair of the disciplinary panel.

(c) In the event of the recusal of a disciplinary panel member or the inability of a panel member to attend a temporary suspension proceeding, an alternate board member may serve on the disciplinary panel upon appointment by the president or presiding officer of the board.

(d) Notwithstanding the Open Meetings Act, Chapter 551, Tex. Gov't Code, and in accordance with Section 164.059(d) of the Act, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and the convening at

one location of the disciplinary panel is inconvenient for any member of the disciplinary panel.

(e) A hearing before a disciplinary panel shall constitute a hearing before the board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## CHAPTER 190. DISCIPLINARY GUIDELINES

The Texas Medical Board proposes amendments to §§190.8, 190.14 and 190.16, concerning Disciplinary Guidelines.

The amendment to §190.8 sets out rules and guidelines as necessary to comply with Chapter 53, Texas Occupations Code, as required by Senate Bill 419. The amendment to §190.14 set out standards for consideration of appropriate disciplinary action and providing that the Board will consider whether the violation relates directly to patient care or involves only an administrative penalty, as required by Senate Bill 419; adds references to statutes; provide standard sanctions for convictions for felonies and certain misdemeanors; and add detail to standard sanctions for quality of care violations. The amendment to §190.16 adds consideration of whether a violation is an administrative violation, aggravated administrative violation, or patient care violation to the considerations to determine the amount of an administrative penalty.

Michele Shackelford, General Counsel, Texas Medical Board, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications to state or local government as a result of enforcing the amendments as proposed. There will be no effect to individuals required to comply with the amendments as proposed.

Ms. Shackelford also has determined that for each year of the first five years the amendments as proposed are in effect the public benefit anticipated as a result of enforcing the amended sections will be clarifying the Board's guidelines regarding disciplinary action based on conviction of a felony or certain misdemeanors, as required by Senate Bill 419; allowing the Board to consider whether a violation of the Medical Practice Act is related directly to patient care or involves only an administrative violation, as required by Senate Bill 419; providing additional guidance regarding sanctions for convictions for felonies and certain misdemeanors and violations of the standard of care and conforming the rules to statutory changes in Senate Bill 419 by requiring consideration of whether a violation is an administrative violation to determine the appropriate sanction. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

## SUBCHAPTER B. VIOLATION GUIDELINES

### 22 TAC §190.8

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The following statutes, articles or codes are affected by this proposal: §153.0045, Texas Occupations Code.

#### §190.8. Violation Guidelines.

When substantiated by credible evidence, the following acts, practices, and conduct are considered to be violations of the Act. The following shall not be considered an exhaustive or exclusive listing.

(1) - (5) (No change.)

(6) Discipline based on Criminal Conviction. The board is authorized by the following separate statutes to take disciplinary action against a licensee based on a criminal conviction:

#### (A) Felonies.

(i) Section 164.051(a)(2)(B) of the Medical Practice Act, section 204.303(a)(2) of the Physician Assistant Act, and section 203.351(a)(7) of the Acupuncture Act, (collectively, the "Licensing Acts") authorize the board to take disciplinary action based on a conviction, deferred adjudication, community supervision, or deferred disposition for any felony.

(ii) Chapter 53, Tex. Occ. Code authorizes the board to revoke or suspend a license on the grounds that a person has been convicted of a felony that directly relates to the duties and responsibilities of the licensed occupation.

(iii) Because the provisions of the Licensing Acts may be based on either conviction or a form of deferred adjudication, the board determines that the requirements of the Act are stricter than the requirements of Chapter 53 and, therefore, the board is not required to comply with Chapter 53, pursuant to section 153.0045 of the Act.

(iv) Upon the initial conviction for any felony, the board shall suspend a physician's license, in accordance with section 164.057(a)(1)(A), of the Act.

(v) Upon final conviction for any felony, the board shall revoke a physician's license, in accordance with section 164.057(b) of the Act

#### (B) Misdemeanors.

(i) Section 164.051(a)(2)(B) of the Act authorizes the board to take disciplinary action based on a conviction, deferred adjudication, community supervision, or deferred disposition for any misdemeanor involving moral turpitude.

(ii) Chapter 53, Tex. Occ. Code authorizes the board to revoke or suspend a license on the grounds that a person has been convicted of a misdemeanor that directly relates to the duties and responsibilities of the licensed occupation.

(iii) For a misdemeanor involving moral turpitude, the provisions of section 164.051(a)(2) of the Medical Practice Act and section 205.351(a)(7) of the Acupuncture Act, may be based on either conviction or a form of deferred adjudication, and therefore the board determines that the requirements of these licensing acts are stricter than the requirements of Chapter 53 and the board is not required to comply with Chapter 53, pursuant to section 153.0045 of the Act.

(iv) The Medical Practice Act and the Acupuncture Act do not authorize disciplinary action based on conviction for a misdemeanor that does not involve moral turpitude. The Physician Assistant Act does not authorize disciplinary action based on conviction for a misdemeanor. Therefore these licensing acts are not stricter than the requirements of Chapter 53 in those situations. In such situations, the conviction will be considered to directly relate to the practice of medicine if the act:

(I) arose out of the practice of medicine, as defined by the Act;

(II) arose out of the practice location of the physician;

(III) involves a patient or former patient;

(IV) involves any other health professional with whom the physician has or has had a professional relationship;

(V) involves the prescribing, sale, distribution, or use of any dangerous drug or controlled substance; or

(VI) involves the billing for or any financial arrangement regarding any medical service;

(v) [(6)] Misdemeanors involving moral turpitude. Misdemeanors involving moral turpitude, within the meaning of the Act, are those that involve dishonesty, fraud, deceit, misrepresentation, deliberate violence, or that reflect adversely on a licensee's honesty, trustworthiness, or fitness to practice under the scope of the person's license.

(C) In accordance with section 164.058 of the Act, the board shall suspend the license of a licensee serving a prison term in a state or federal penitentiary during the term of the incarceration regardless of the offense.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER C. SANCTION GUIDELINES

### 22 TAC §190.14

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The following statutes, articles or codes are affected by this proposal: §164.001(j).

#### §190.14. Disciplinary Sanction Guidelines.

These disciplinary sanction guidelines are designed to provide guidance in assessing sanctions for violations of the Medical Practice Act.

The ultimate purpose of disciplinary sanctions is to protect the public, deter future violations, offer opportunities for rehabilitation if appropriate, punish violators, and deter others from violations. These guidelines are intended to promote consistent sanctions for similar violations, facilitate timely resolution of cases, and encourage settlements.

(1) - (2) (No change.)

(3) The standard and minimum sanctions outlined below are based on the conclusion stated in Section 164.001(j) of the Act that a violation related directly to patient care is more serious than one that involves only an administrative violation. An administrative violation may be handled informally in accordance with Section 187.14(7) of this title (relating to Informal Resolutions of Administrative Violations). Administrative violations may be more or less serious, depending on the nature of the violation. Administrative violations that are considered by the board to be more serious are designated as being an "aggravated administrative violation".

(4) ~~[(3)]~~ The maximum sanction in all cases is revocation of the licensee's license, which may be accompanied by an administrative penalty of up to \$5,000 per violation. In accordance with §165.003 of the Act, each day the violation continues is a separate violation.

(5) ~~[(4)]~~ Each statutory violation constitutes a separate offense, even if arising out of a single act.

(6) ~~[(5)]~~ If the licensee acknowledges a violation and agrees to comply with terms and conditions of remedial action through an agreed order, the standard sanctions may be reduced.

(7) ~~[(6)]~~ The following standard sanctions shall apply to violations of the Act:

(A) Failure to timely provide copies of medical or billing records upon written request is an administrative violation.

(i) Violation of:

(I) Section [§]159.006 - information furnished by licensee; and

(II) Section [§]164.052(a)(2) - violation of Board Rule, to wit: §165.2 (relating to Medical Record Release and Charges).

(ii) Standard Sanction:

(I) furnishing medical records requested;

(II) restitution; and

(III) administrative penalty of \$1,000 per violation.

(B) Failure to timely comply with a board subpoena or request for information is an administrative violation.

(i) Violation of §160.009 and board rule §179.4 (relating to Request for Information and Records from Physicians).

(ii) Standard Sanction:

(I) public reprimand;

(II) compliance with the subpoena or request; and

(III) administrative penalty of \$500 for each day of noncompliance.

(C) Conviction or deferred adjudication for [of] a felony may be either an aggravated administrative violation or a patient care violation, depending on the facts underlying the offense [criminal offense].

(i) Violation of §164.051(a)(2)(A) of the Medical Practice Act, §204.303(a)(2) of the Physician Assistant Act, and §205.351(a)(7) of the Acupuncture Act.

(ii) In accordance with §164.057(a)(1)(A) of the Medical Practice Act, the board shall suspend a licensee's license on proof that the licensee has been initially convicted of any felony, [ or a misdemeanor under Chapter 22 (other than a misdemeanor punishable by fine only); §25.07, or §25.071 of the Texas Penal Code; a misdemeanor in which the defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; an initial finding by the trier of fact of guilt of a felony under Chapter 481 or 483 of the Health and Safety Code; or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. §801 et. seq.)]

(iii) In accordance with §164.057(b) of the Medical Practice Act [On final conviction for a felony or misdemeanor described in this chapter], the board shall revoke the licensee's license on final conviction for a felony.

~~[(iv)]~~ A conviction of misdemeanor involving moral turpitude, for which suspension or revocation is not mandated by the Medical Practice Act]

~~[(H)]~~ If the conviction is related to the practice of medicine, the standard sanction shall be revocation of the license.]

~~[(H)]~~ If the conviction is not related to the practice of medicine, the standard sanction shall require:]

~~[(a-)]~~ compliance with all restrictions, conditions and terms imposed by any order of probation or deferred adjudication;]

~~[(b-)]~~ public reprimand; and]

~~[(c-)]~~ administrative penalty of \$2,000 per violation.]

~~[(v)]~~ A conviction includes an adjudication of guilt or an order of deferred adjudication.]

~~[(vi)]~~ In accordance with §164.058 of the Act, the board shall suspend the license of a licensee serving a prison term in a state or federal penitentiary during the term of the incarceration regardless of the offense.]

(D) Conviction or deferred adjudication for a misdemeanor involving moral turpitude may be either an aggravated administrative violation or a patient care violation, depending on the facts underlying the offense.

(i) Violation of §164.051(a)(2)(B) of the Medical Practice Act and §205.351(a)(7) of the Acupuncture Act.

(ii) Standard Sanction:

(I) If the offense is related to the duties and responsibilities of the licensed occupation, the standard sanction shall be revocation of the license.

(II) If the offense is not related to the duties and responsibilities of the licensed occupation, the standard sanction shall require:

(a-) Suspension of license, which may be probated after 90 days;

(b-) compliance with all restrictions, conditions and terms imposed by any order of probation or deferred adjudication;

(c-) public reprimand; and

(d-) administrative penalty of \$2,000 per violation.

(E) Conviction of a misdemeanor that directly relates to the duties and responsibilities of the licensed occupation may be either an administrative violation or a patient care violation, depending on the facts underlying the offense.

(i) Violation of §53.021, Tex. Occ. Code.

(ii) Standard Sanction:

(I) If the offense involves patient care, the standard sanction shall be revocation of the license.

(II) If the offense does not involve patient care and is an administrative violation only, the standard sanction shall require:

(-a-) compliance with all restrictions, conditions and terms imposed by any order of probation or deferred adjudication;

(-b-) public reprimand; and

(-c-) administrative penalty of \$2,000 per violation.

(F) Conviction of Certain Misdemeanors may be either an administrative violation or a patient care violation, depending on the facts underlying the offense.

(i) In accordance with §164.057(a)(1)(B), (C), (D), and (E) of the Medical Practice Act, the board shall suspend a licensee's license on proof that the licensee has been initially convicted any of the following misdemeanors:

(I) a misdemeanor under Chapter 22, Penal Code, other than a misdemeanor punishable by fine only;

(II) a misdemeanor on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure;

(III) a misdemeanor under Section 25.07, Penal Code, or

(IV) a misdemeanor under Section 25.071, Penal Code.

(ii) In accordance with §164.057(b) of the Medical Practice Act, the board shall revoke the licensee's license on final conviction of any of these misdemeanors.

(G) [(F)] Failure to obtain/document continuing medical education is an administrative violation.

(i) Violation of §164.051(a)(3) or violation of board rule §166.2 (relating to Continuing Medical Education).

(ii) Standard Sanction:

(I) directed CME; and

(II) administrative penalty of \$1,000 per violation.

(H) [(E)] Impairment of ability to practice may be either an aggravated administrative violation or a patient care violation, depending on the whether a violation of the standard of care has resulted from the impairment.

(i) Within the meaning of §164.051(a)(4) - inability to practice medicine with reasonable skill and safety to patients because of [off] illness, drunkenness, excessive use of drugs, or a mental condition.

(ii) Standard Sanction: suspension of license until such time as the licensee can demonstrate that the licensee is safe and competent to practice medicine.

(iii) Alternate Standard Sanction: probation of suspension for 10 [5] years under terms and conditions, including, but not limited to:

(I) drug testing;

(II) restrictions on practice;

(III) alcoholics anonymous/narcotics anonymous attendance;

(IV) psychiatric/psychological evaluation and treatment; and

(V) proficiency testing.

(iv) Chapter 180 of this title (relating to Rehabilitation Orders) provides guidance on whether a licensee is eligible for and should be placed under a confidential rehabilitation order.

(I) [(F)] Failure to maintain adequate medical records may be either an administrative violation or a patient care violation, depending on whether a patient was harmed because of the failure.

(i) Violation of:

(I) Section [§]164.051(a)(6) - professional failure to practice medicine consistent with the public health and welfare;

(II) Section [§]164.054 - additional requirements regarding drug records;

(III) Section [§]164.053(a)(2) - failure to keep complete and accurate records of purchases and disposals of controlled substances and dangerous drugs, and

(IV) Section [§]164.051(a)(3) - violation of board rules, including:

(-a-) board rule §165.1(a) (relating to Medical Records) - failure to maintain adequate medical records; and

(-b-) board rule §170.3 (relating to Authority of Physician to Prescribe for the Treatment of Pain) - prescribing guidelines for the treatment of pain.

(ii) Standard Sanction: probation for 2 years under terms and conditions, including, but not limited to:

(I) competency testing;

(II) directed CME;

(III) monitoring of practice; and

(IV) administrative penalty of \$2,000 per violation.

(J) [(G)] Quality of Care is a patient care violation.

(i) Violations of:

(I) Section [§]164.051(a)(6) - failure to practice medicine in a professional manner consistent with the public health and welfare; and

(II) Section [§]164.051(a)(8) - repeated and meritorious medical malpractice claims.

(ii) Standard Sanction:

(I) The standard sanction, which shall apply in the case of a single patient with no substantial patient harm and no other aggravating or mitigating circumstances, shall be one or more of the following:

[(F)] suspension of license for 3 years;]



~~[(H)]~~ suspension probated after 90 days under terms and conditions, including, but not limited to:

- (-a-) limiting the practice of the person, or excluding one or more specified activities of medicine;
- (-b-) proficiency testing;
- (-c-) directed CME;
- (-d-) monitoring of the practice; ~~and~~
- (-e-) public reprimand; and
- (-f-) ~~[(e-)]~~ administrative penalty of \$3,000 per violation.

(II) Standard sanction in a case involving patient harm or other aggravating factors shall be:

- (-a-) suspension of license for 3 years;
- (-b-) suspension may be probated after 90 days under terms and conditions similar to those described in subclause (I) of this clause, immediately preceding.

(K) ~~[(H)]~~ Discipline by peers may be either an administrative violation or a patient care violation, depending on the facts underlying the disciplinary action.

- (i) Within the meaning of §164.051(a)(7).
- (ii) Standard Sanction: See the applicable standard sanction for the violation of the Texas Medical Practice Act that most closely relates to the basis of the disciplinary action by peers. In addition, the licensee shall comply with all restrictions, conditions and terms imposed by the disciplinary action by peers.
- (iii) Alternate Standard Sanction:
  - (I) public reprimand;
  - (II) comply with all restrictions, conditions and terms imposed by the disciplinary action by peers; and
  - (III) administrative penalty of \$1,000 per violation.

(L) ~~[(H)]~~ Disciplined by another state or military may be either an administrative violation or a patient care violation, depending on the facts underlying the disciplinary action.

- (i) Within the meaning of §164.051(a)(9).
- (ii) Standard Sanction: See the applicable standard sanction for the most similar violation of the Act. In addition, the licensee shall comply with all restrictions, conditions and terms imposed by the other state or military.
- (iii) Alternate Standard Sanction:
  - (I) comply with all restrictions, conditions and terms imposed by the other state or military; and
  - (II) administrative penalty of \$1,000 per violation.
- (iv) The standard sanction for a licensee whose license has been revoked by another state or who has voluntarily surrendered his license while an investigation or disciplinary action is pending shall be revocation of the license.

(M) ~~[(H)]~~ Improper prescribing, dispensing, or administering of drugs is a patient care violation.

- (i) Violation of:
  - (I) Section [§]164.053(a)(3) - prescribing or dispensing drugs to a drug abuser;
  - (II) Section [§]164.053(a)(5) - prescribing or administering drugs in a non therapeutic manner; and

(III) Section [§]164.053(a)(6) - prescribing or administering drugs in a manner inconsistent with the public health and welfare.

(ii) Standard Sanction: The standard sanction, which shall apply in the case of a single patient with no substantial patient harm and no other aggravating or mitigating circumstances, shall be:

- (I) suspension of license for 2 years.
- (II) suspension probated after 60 days under terms and conditions, including, but not limited to:
  - (-a-) restrictions on practice, including prescribing, administering controlled substances and dangerous drugs;
  - (-b-) proficiency testing;
  - (-c-) directed CME; and
  - (-d-) administrative penalty of \$2,000 per violation.

(N) ~~[(K)]~~ Writing false or fictitious prescriptions is a patient care violation.

- (i) Violation of §164.053(a)(4).
- (ii) Standard Sanction:
  - (I) suspension of license for 4 years;
  - (II) suspension probated after 90 days under terms and conditions, including, but not limited to:
    - (-a-) restrictions on practice including restrictions on prescribing, administering controlled substances and dangerous drugs;
    - (-b-) proficiency testing;
    - (-c-) directed CME; and
    - (-d-) administrative penalty of \$2,000 per violation.

(O) ~~[(L)]~~ Fraudulent, improper billing practices is an aggravated administrative violation.

- (i) Violation of §164.053(a)(7).
- (ii) Standard Sanction:
  - (I) suspension of license for 3 years;
  - (II) suspension probated after 90 days under terms and conditions, including, but not limited to:
    - (-a-) monitoring of practice, including billing practices;
    - (-b-) directed CME;
    - (-c-) restitution; and
    - (-d-) administrative penalty of \$3,000 per violation.

(P) ~~[(M)]~~ Failing to adequately supervise subordinates and improper delegation is a patient care violation.

- (i) Violation of:
  - (I) Section [§]164.053(a)(8) and
  - (II) Section [§]164.053(a)(9).
- (ii) Standard Sanction:
  - (I) suspension of license for 3 years;
  - (II) suspension probated after 60 days under terms and conditions, including, but not limited to:
    - (-a-) monitoring of practice;
    - (-b-) directed CME; and

(-c-) administrative penalty of \$2,000 per violation.

(Q) ~~[(N)]~~ Failure to comply with the terms and conditions of a Board order may be either an aggravated administrative violation or a patient care violation, depending on the facts underlying the failure.

(i) Within the meaning of §164.103 - rescission of probation.

(ii) Standard Sanction:

(I) public reprimand;

(II) extension of the Board order by 6 months for each violation; and

(III) administrative penalty of \$2,000 per violation.

(iii) Unless the board finds that the facts warrant a less severe sanction, the license of a person who violates a Board order to abstain from the consumption of alcohol and/or drugs, as evidenced by a positive drug test or other proof, shall be revoked.

(R) ~~[(O)]~~ For any violation of the Act that is not specifically mentioned in this rule, the board shall apply a sanction that generally follows the spirit and scheme of the sanctions stated in subparagraphs (A) - (R) ~~[(A) - (N)]~~ of this paragraph.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

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For further information, please call: (512) 305-7016



## SUBCHAPTER D. ADMINISTRATIVE PENALTIES

### 22 TAC §190.16

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The following statutes, articles or codes are affected by this proposal: Section 190.16--none.

#### §190.16. Administrative Penalties.

(a) The amount of an administrative penalty may not exceed \$5,000 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including;

(A) whether it is an administrative violation, an aggravated administrative violation, or a patient care violation;

(B) ~~[(A)]~~ the nature, circumstances, extent, and gravity of any prohibited act; and

(C) ~~[(B)]~~ the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation; and

(5) efforts to correct the violation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## CHAPTER 193. STANDING DELEGATION ORDERS

### 22 TAC §193.2, §193.6

The Texas Medical Board proposes amendments to §193.2 and §193.6, concerning Standing Delegation Orders.

The amendment to §193.2 deletes the reference to registration of delegation of prescriptive authority with the Board. The amendment to §193.6 sets out rules requiring a physician who delegates prescriptive authority to document when and to whom a delegation is made and eliminate references to and procedures for Advisory Committee on waivers of requirements for delegation of prescriptive authority, as required by Senate Bill 419.

Michele Shackelford, General Counsel, Texas Medical Board, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications to state or local government as a result of enforcing the amendments as proposed. There will be no effect to individuals required to comply with the amendments as proposed.

Ms. Shackelford also has determined that for each year of the first five years the amendments as proposed are in effect the public benefit anticipated as a result of enforcing the amended sections will be conforming rules to statutory changes in Senate Bill 419. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §§153.001, 157.0511(b-1) and 157.0542(d-h) which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings;

perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The following statutes, articles or codes are affected by this proposal: Section 193.2--§157.051(2), Texas Occupations Code; Section 193.6--none.

§193.2. *Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the contents clearly indicate otherwise.

(1) - (2) (No change.)

(3) Carrying out or signing a prescription drug order--Signing a prescription drug order, or completing [To complete] a prescription drug order presigned by the delegating physician, [or the signing of a prescription] by an advanced practice nurse or physician assistant after properly documented delegation of prescription authority [being registered with the board by the delegating physician as a person authorized to sign a prescription]. The following information shall be provided on each prescription: the patient's name and address; the drug to be dispensed; directions to the patient for taking the drug; dosage; the intended use of the drug, if appropriate; the name, address, and telephone number of the physician; the name, address, telephone number, identification number, and signature of the physician assistant or advanced practice nurse completing or signing the prescription drug order; the date; and the number of refills permitted. This also includes the ability of a physician assistant or advanced practice nurse to telephone prescriptions in to a pharmacy under his or her prescriptive authority.

(4) Controlled substance--A [a] substance, including a drug, an adulterant, and a dilutant, listed in Schedules I through V or Penalty Groups 1, 1-A, or 2 through 4 as described under the Texas Health and Safety Code, Chapter 481 (Texas Controlled Substances Act). The term includes the aggregate weight of any mixture, solution, or other substance containing a controlled substance.

(5) - (14) (No change.)

§193.6. *Delegation of the Carrying Out or Signing of Prescription Drug Orders to Physician Assistants and Advanced Practice Nurses.*

(a) - (c) (No change.)

(d) Delegation of prescriptive authority at a physician's alternate practice site.

(1) - (2) (No change.)

(3) Physician supervision is adequate for the purposes of this subsection if the delegating physician:

(A) is on-site with the advanced practice nurse or physician assistant at least [test] 20 percent of the time;

(B) - (C) (No change.)

(4) (No change.)

(e) (No change.)

(f) Documentation of supervision.

(1) A physician shall document any delegation of prescriptive authority to a physician assistant or advanced practice nurse by a protocol, as defined in this section. The physician shall also maintain a permanent record of all protocols the physician has signed, showing to whom the delegation was made and the dates of the original delegation, each annual review, and termination.

(2) If the physician assistant or advanced practice nurse is located at a site other than the site where the physician spends the majority of the physician's time, physician supervision shall be further

documented by a permanent record showing [: The documentation should be through a log or other method appropriate to the practice. The documentation will include] the names or identification numbers of patients discussed during the daily status reports, the times when the physician is on site, and a summary of what the physician did while on site. The [Said] summary shall include a description of the quality assurance activities conducted and the names of any patients seen or whose case histories were reviewed with the physician assistant or advanced practice nurse. The supervising physician shall sign the documentation at the conclusion of each site visit. Documentation is not required if the physician assistant or advanced practice nurse is permanently located with the physician at a site where the physician spends the majority of the physician's time.

(g) Alternate physicians. If a delegating physician will be unavailable to supervise the physician assistant or advanced practice nurse as required by this section, arrangements shall be made for another physician to provide that supervision. The alternate (substitute) physician providing that supervision shall affirm in writing and document through a permanent record [log] where the physician assistant or advanced practice nurse is located that he or she is familiar with the protocols or standing delegation orders in use and is accountable for adequately supervising prescriptive delegation provided pursuant to those protocols or standing delegation orders. The permanent record [log] shall be kept with the protocols or standing orders. The permanent record [log] shall contain dates of the alternate physician supervision and be signed by the alternate physician acknowledging this responsibility. The physician assistant or advanced practice nurse is responsible for verifying that the alternate physician is a licensed Texas physician holding an unrestricted and active license.

(h) (No change.)

(i) Waivers.

(1) - (3) (No change.)

(4) Procedure.

~~[(A) In accordance with this section and §157.0542 of the Act, the board shall appoint an advisory committee to review as needed applications for waivers and make recommendations to the board regarding waiver requests.]~~

~~[(B)]~~ (A) A physician may apply for a waiver by submitting a written request to the licensure division of the board via the agency website, email, or regular mail. The request shall then be submitted to the board [waiver committee] for review.

~~[(C) An advisory committee recommendation of the approval of a waiver, with or without modifications, requires a vote of at least:]~~

~~[(i) three advanced practice nurse committee members;]~~

~~[(ii) three physician assistant committee members; and]~~

~~[(iii) three physician committee members.]~~

(B) ~~[(D)]~~ The Standing Orders Committee of the board shall review requests for waivers [recommendations from the advisory committee] and may recommend to the full board that a waiver be granted, denied or modified.

(C) ~~[(E)]~~ The board may grant a waiver only if ~~[the advisory committee recommends that the waiver be granted; unless]~~ the board determines good cause exists to grant a waiver ~~[the committee does not recommend].~~

(D) [(F)] The [advisory committee may recommend that the] board may approve a waiver with modifications.

(E) [(G)] If the board denies a waiver, a written explanation for the denial shall be given to the physician along with any recommended modifications that would make the waiver application acceptable.

(F) [(H)] The board may revoke, suspend or modify a waiver previously granted after providing the physician notice and opportunity for a hearing as provided for by the Administrative Procedure Act and Chapter 187 of this title (relating to Procedural Rules).

(j) - (n) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

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## PART 23. TEXAS REAL ESTATE COMMISSION

### CHAPTER 535. GENERAL PROVISIONS SUBCHAPTER R. REAL ESTATE INSPECTORS

#### 22 TAC §§535.210, 535.216, 535.218

The Texas Real Estate Commission (TREC) proposes amendments to §535.210, concerning Fees, §535.216, concerning Renewal of License or Registration, and §535.218, concerning Continuing Education. The amendments are proposed to implement revisions to Texas Occupations Code Chapter 1102 enacted during the 79th Legislative Session, Regular Session, by Senate Bill 810, and to reflect the fact that home inspector licenses will go from a one-year renewal to a two-year renewal cycle in 2006 as authorized by revisions to Texas Occupations Code Chapter 1102 enacted during the 78th Legislative Session, Regular Session, by House Bill 1508.

Chapter 1102 was revised to require licensing and renewal of corporations and limited liability companies that engage in professional home inspecting for buyers and sellers in Texas. The proposed amendments to §535.210 add a \$10 fee to be charged corporations and limited liability companies applying for a Texas professional inspector license, and clarify that the \$100 Inspector Recovery Fund fee does not apply to corporations and limited liability companies that apply for a professional inspector license. The proposed amendments to §535.216 clarify that in order to renew a professional inspector license issued to a corporation or limited liability company, the entity must designate an officer, manager, or employee of the entity who meets the requirements of Chapter 1102, including continuing education requirements. The proposed amendments to §535.218 clarify

that a licensed apprentice, real estate or professional inspector must take the required hours of continuing education within the term of the current license, and further clarifies that the commission may not give continuing education course credit twice for the same course taken by a licensee within a 2-year period. The commission was given authority under House Bill 1508 during the 78th Legislative Session to issue or renew an inspector license for a period not to exceed 24 months. Given this authority, the commission plans to implement the 2-year licensing and renewal program in April 2006. The amendments to §535.218 change the references from a 1-year period to a 2-year period for completion of continuing education to parallel the 2-year license.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state as a result of enforcing or administering the amended sections. There are no anticipated fiscal implications for units of local government. There is no anticipated impact on small businesses, micro businesses or local or state employment as a result of implementing the amended sections except to the extent that a corporation or limited liability company that engages in professional home inspecting for buyers and sellers in Texas would be required to pay the \$10 application fee in order to be licensed as a professional inspector in Texas.

Ms. DeHay also has determined that for each year of the first five years the amendments as proposed are in effect the public benefit anticipated as a result of enforcing the amended sections will be clarity in the implementation of the statutory requirements for licensing and to assist interested person in the application process. The anticipated economic cost to persons who are required to comply with the proposed amendments is the \$10 fee to apply for a license.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101 and Chapter 1102 and Senate Bill 810, 79th Legislature, Regular Session. No other statute, code or article is affected by the proposed amendments.

#### §535.210. Fees.

(a) The commission shall charge and collect the following fees:

(1) - (8) (No change.)

(9) a fee of \$10 for filing an original application for a license as a professional inspector by a corporation or limited liability company;

(10) [(9)] a fee of \$20 for requesting issuance of a license because of a change of name, return to active status, or change in sponsoring professional inspector; and

(11) [(40)] a fee of \$100 for deposit in the real estate inspection recovery fund upon an applicant's successful completion of an examination. This fee does not apply to application for a license as a professional inspector by a corporation or limited liability company.

(b) (No change.)

§535.216. *Renewal of License or Registration.*

(a) - (d) (No change.)

(e) The commission may not renew a license issued to a corporation or limited liability company unless the corporation or limited liability company has designated an officer, manager or employee who meets the requirements of Chapter 1102, Texas Occupations Code, including satisfaction of continuing education requirements. No person may act as designated officer, designated manager or designated employee if the person has failed to meet continuing education requirements. For the purpose of this section, continuing education requirements for the designated officer, designated manager or designated employee must be satisfied during the term of any individual professional inspector license held by the officer, manager or employee. [Renewal applications filed after expiration of the license are subject to the increased fees provided by Chapter 1102]

(f) - (g) (No change.)

§535.218. *Continuing Education.*

(a) (No change.)

(b) Courses submitted for continuing education credit must be successfully completed during the term of the current license [12 month period immediately preceding the expiration date of the license which is being renewed]. The commission may not grant continuing education credit twice for the same course taken by a licensee within a 2-year [12 month] period.

(c) - (h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 19, 2005.

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Loretta R. DeHay

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 465-3900



## CHAPTER 543. RULES RELATING TO THE PROVISIONS OF THE TEXAS TIMESHARE ACT

### 22 TAC §§543.1 - 543.11

The Texas Real Estate Commission (TREC) proposes amendments to §543.1, concerning Registration, §543.2, concerning Amendments, §543.3, concerning Fees, §543.4, concerning Forms, §543.5, concerning Violations, §546.6, concerning Complaints and Disciplinary Proceedings, and proposes new §543.7, concerning Contract Requirements, §543.8, concerning Disclosure Requirements, §543.9, concerning Exemptions, §543.10, concerning Escrow Requirements, and §543.11, concerning Maintenance of Registration.

The amendments and new rules are proposed to implement revisions to the Texas Timeshare Act, Chapter 221, Texas Property

Code enacted during the 79th Legislative Session, Regular Session, by House Bill 1045. The amendments are also proposed in connection with TREC's on-going review of its rules. The amendments are intended to conform the sections to the language used in other TREC rules, and adopt by reference revised and new forms to be used by timeshare developers when registering a timeshare property, amending a registration, obtaining authorization to conduct pre-sales of timeshares, and registering under an abbreviated registration process under limited circumstances.

The modifications to the existing rules, among other things, revise the registration form to verify the content of the timeshare disclosure statement that a developer must provide to a purchaser prior to the sale of a timeshare interest; verify required purchase contract provisions, including the purchaser's rescission period, processing of purchaser refunds, and disclosure of the rescission period in the purchase contract; and verify that a developer provides a statement to the purchaser that, on an annual basis, the sum of the nights that purchasers are entitled to use the accommodations does not exceed the number of nights the accommodations are available for use by the purchasers.

The proposed rules adopt by reference a new application for a pre-sale registration form which a developer may use if authorized by TREC to conduct presales prior to completion of registration if the application is administratively complete and if the developer otherwise complies with specific statutory requirements. The proposed rules adopt by referenced a new form to be used in an abbreviated registration process for out-of-state developers who are appropriately registered in another U.S. jurisdiction and provide certain documentation to TREC. The proposed rules and revisions to the existing amendment form clarify when amendments to a timeshare plan registration must be filed. The proposed amendments to the rules revise the fee provisions that are applicable for each type of registration and clarify TREC's powers to conduct hearings, initiate disciplinary actions and assess administrative penalties.

Loretta R. DeHay, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for the state as a result of enforcing or administering the sections. There are no anticipated fiscal implications for units of local government. There is no anticipated impact on small businesses, micro businesses or local or state employment as a result of implementing the sections.

Ms. DeHay also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be clarity in the implementation of the statutory requirements for licensing to assist interested person in the application process. The anticipated economic cost to persons who are required to comply with the proposed revisions and new rules is the registration fee, which varies depending on the number of timeshare interests in the timeshare plan, not to exceed \$3,500; and the amendment fee not to exceed \$2,000.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments and new sections are proposed under the Texas Government Code, §221.024, which authorizes the Texas Real Estate Commission to prescribe and publish forms and adopt rules necessary to carry out the provisions of The Texas Timeshare Act.

The statute affected by this proposal is the Texas Government Code, Chapter 221.

*§543.1. Registration.*

(a) A developer ~~[person]~~ who wishes to register a timeshare plan ~~[property]~~ shall submit an application for registration using forms approved ~~[prepared]~~ by the commission. The commission may not accept for filing an application submitted without a completed application form and ~~[or]~~ the appropriate filing fee.

(b) If the commission determines that an application for registration of a timeshare plan ~~[property]~~ satisfies all requirements for registration, the commission shall promptly register the timeshare plan ~~[property]~~. The commission shall notify the applicant in writing that the timeshare plan ~~[property]~~ has been registered, specifying the anniversary ~~[effective]~~ date of the registration and shall assign a registration number to the timeshare plan ~~[property]~~.

(c) If the commission determines that an application for registration of a timeshare plan ~~[property]~~ fails to satisfy any requirement for registration, the commission shall notify the applicant of any deficiency in writing. The commission may require an applicant to revise and resubmit written documents filed with the application or to provide additional information if the commission determines that the application is incomplete or inaccurate. Upon submission by an applicant of a response sufficient in the opinion of the commission to cure any deficiency in the application, the commission shall promptly register the timeshare plan ~~[property]~~ and provide the applicant with the written notice required by these rules. An application will be terminated and the commission shall take no further action 90 ~~[180]~~ days after the commission mails a request to the applicant for curative action.

*§543.2. Amendments.*

(a) A person who wishes to amend the registration of a timeshare plan ~~[property]~~ shall submit an application to amend the registration using forms approved ~~[prepared]~~ by the commission. A developer ~~[person]~~ may file an application to amend a ~~[the]~~ registration prior to the occurrence of the change. The commission may not accept for filing an application submitted without a completed application form and ~~[or]~~ the appropriate filing fee.

(b) For the purposes of Section 221.023 of the Texas Timeshare Act,

(1) "promptly" means within 30 days after the occurrence of a materially ~~[material and]~~ adverse change in any document contained in a registration ; and [-]

(2) "materially adverse change" includes, but is not limited to, a change to any document contained in the registration that reduces benefits or increases costs to prospective purchasers, or any change to financial assurance documentation and disclosures required by Sections 221.061 or 221.063 of the Texas Timeshare Act.

(c) Materially adverse change does not include the correction of any typographical or other nonsubstantive changes.

(d) In addition to disclosing materially adverse changes, a developer shall promptly amend its registration for any of the following reasons:

- (1) a change of developer;
- (2) a change of exchange company or association with an additional exchange company;
- (3) an increase or decrease in assessments;
- (4) any change in the accommodations that are part of the timeshare plan;

(5) an increase or decrease in the number of timeshare interests in the timeshare plan registered by the commission;

(6) a change of management company; and

(7) a change to a substantive provision of the management agreement.

~~[(e) An increase in the number of timeshare interests to be offered for sale is deemed a material and adverse change if it exceeds by more than 10% of the number of interests which existed or were proposed in the original registration.]~~

~~[(d) An increase in the dues, assessments, fees or charges paid or to be paid by purchasers for the use of accommodations or amenities or for any other purpose is deemed a material and adverse change if it exceeds by more than 15% the amounts set forth in the original registration.]~~

(e) If the commission determines that a registration, if amended in the manner indicated in an application to amend a registration, would continue to satisfy all requirements for registration, the commission shall promptly notify the applicant in writing that the registration has been amended, specifying the effective date of the amendment.

(f) If the commission determines that a registration, if amended in the manner indicated in an application to amend a registration, would fail to satisfy a requirement for registration, the commission shall notify the applicant of any deficiency. The commission may require the applicant to revise and resubmit written documents filed with the application or to provide additional information if the commission determines that the application or written material filed with the application is incomplete or inaccurate. Upon submission by an applicant of a response sufficient in the opinion of the commission to cure any deficiency in the application, the commission shall promptly notify the applicant that the registration has been amended, specifying the effective date of the amendment.

*§543.3. Fees.*

~~[(a) Applicants may pay fees in the form of a check, cashier's check or money order made payable to the Texas Real Estate Commission.]~~

(a) ~~[(b)]~~ An applicant for registration of a timeshare plan or an applicant for abbreviated registration of a timeshare plan ~~[property]~~ shall pay a filing fee of \$2.00 for each 7 days of annual use availability in each accommodation that is a part of the timeshare plan ~~[per timeshare interest to be sold for units located on the timeshare property]~~, provided, however, that the commission shall charge and collect a minimum filing fee of \$500.00 and that no registration filing fee shall exceed \$3,500.00 ~~[\$2,500.00]~~.

(b) ~~[(e)]~~ An applicant for amendment of the registration of a timeshare plan ~~[property]~~ shall pay a minimum filing fee of \$100.00, provided, however, that the filing fee for an amendment that increases the number of timeshare interests to be sold ~~[by more than 10%]~~ from the number that existed or were proposed for sale in the original registration shall be \$2.00 for each 7 days of annual use availability in each timeshare unit that is being added to the timeshare plan ~~[\$.50 per new timeshare interest]~~ and that no filing fee shall exceed ~~\$2,000.00~~ ~~[\$1,000.00]~~.

(c) An applicant for presale authorization shall pay a filing fee of \$100.00 in addition to the filing fee due under subsection (a) of this section.

(d) A filing fee is not refundable once an application is accepted for filing by the commission.

§543.4. *Forms.*

(a) The Texas Real Estate Commission adopts by reference revised Application to Register a Timeshare Plan, Form TSR 1-4, [3] approved by the commission in 2005 [2004]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, [www.trec.state.tx.us](http://www.trec.state.tx.us).

(b) The Texas Real Estate Commission adopts by reference revised Application to Amend a Timeshare Registration, Form TSR 2-4, [3] approved by the commission in 2005 [2004]. This form is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, [www.trec.state.tx.us](http://www.trec.state.tx.us).

(c) The Texas Real Estate Commission adopts by reference Application for Abbreviated Registration of a Timeshare Plan, Form TSR 3-0, approved by the commission in 2005. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, [www.trec.state.tx.us](http://www.trec.state.tx.us).

(d) The Texas Real Estate Commission adopts by reference Application for Presale Authorization, Form TSR 4-0, approved by the commission in 2005. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, [www.trec.state.tx.us](http://www.trec.state.tx.us).

(e) Applicants may reproduce the forms adopted by the commission from printed copies and by computer. With the exception of the changes to the forms which are permitted by this section, the applicant shall reproduce the text of the forms verbatim and the spacing, length of blanks, fonts and placement of text on the page must appear to be substantially similar to that used by the commission in the printed version of the form.

(f) When using the forms, the applicant must comply with the following:

(1) The applicant may select the type and size of the fonts, provided the fonts are no smaller than those used in the printed version of the form adopted by the commission.

(2) The forms must be printed on letter sized ("8 1/2 by 11") paper.

(3) Whether a form is reproduced by computer or is preprinted by the applicant, the applicant may allocate such space for narrative responses where noted as the applicant deems necessary or may attach additional pages containing narrative responses to the application.

(4) The applicant may renumber the pages of a form to correspond with any changes made necessary due to adjusting the space for narrative responses.

(5) The applicant may not alter the text of a promulgated application form.

§543.5. *Violations.*

(a) (No change.)

(b) It is a material violation of the Act for a developer [registrant] to represent to a potential purchaser of a timeshare interest by advertising or any other means that a timeshare plan [property] has been approved by the State of Texas or the Texas Real Estate Commission or to represent that the State of Texas or the Texas Real Estate Commission has passed upon the merits of a timeshare plan [offering]. It is not a material violation of the Act for a registrant to represent that a timeshare plan [property] has been registered if the registrant discloses at the same time and in the same manner that the State of Texas and the Texas Real Estate Commission have not approved the timeshare plan [property] or passed upon merits of the timeshare plan [offering].

(c) It is a material violation of the Act for a developer [registrant] to fail to file an application to amend a registration within 30 days of the occurrence of a materially [material and] adverse change in any document contained in the registration or to fail to cure a deficient application to amend a registration within 90 [180] days after the commission has mailed to the applicant a request for curative action.

(d) (No change.)

(e) It is a material violation of the Act for a person to disregard or violate a rule of the commission.

(f) It is a material violation of the Act for a developer to fail to make good a check issued to the commission within 30 days after the commission has mailed a request for payment by certified mail to the developer's last known permanent mailing address as reflected by the commission's records.

(g) It is a material violation of the Act for a developer to fail within 10 working days to provide information or documents requested by the commission or a commission representative in the course of the investigation of a complaint.

§543.6. *Complaints and Disciplinary Proceedings [Hearings].*

(a) Complaints regarding registered timeshare plans shall be in writing and signed by the person filing the complaint.

(b) The commission shall not investigate a complaint submitted more than four years after the date of the transaction that is the subject of the complaint.

(c) Disciplinary proceedings, including appeals, shall be conducted in accordance with the provisions of Chapter 533 of this title and the Administrative Procedure Act, Chapter 2001, Government Code. [Proceedings initiated by the commission to consider the suspension or revocation of the registration of a timeshare property will be conducted in accordance with the provisions of the Administrative Procedure Act, Chapter 2001, Texas Government Code.]

§543.7. *Contract Requirements.*

(a) For purposes of Section 221.043(a) of the Texas Timeshare Act, "conspicuous manner" means that:

(1) the type of the upper and lower case letters used shall be two point sizes larger than the largest nonconspicuous type, exclusive of heading, on the page on which it appears but in at least 10-point type, or

(2) where the use of 10-point type would be impractical or impossible, a different style of type or print may be used, so long as the print remains conspicuous under the circumstances.

(b) For purposes of §543.7(a) of this chapter, any conspicuous type utilized shall be separated on all sides from other type and print and may be utilized only where required by the Texas Timeshare Act or authorized by the commission.

§543.8. *Disclosure Requirement.*

A developer may provide the disclosures required by Section 221.032 and Section 221.033 of the Texas Timeshare Act in an alternate format with the written agreement of the purchaser, provided the developer obtains a signed receipt evidencing that consent from the purchaser.

§543.9. *Exemptions.*

For purposes of Section 221.034(b) of the Texas Timeshare Act, the term "developer" shall include any entity in which the developer, or any affiliate of the developer, has at least a 25% interest.

§543.10. *Escrow Requirements.*

For purposes of Section 221.063(a) of the Texas Timeshare Act, the alternative financial assurance from another state or jurisdiction must be for the same timeshare plan as the timeshare plan being registered or registration being amended.

§543.11. Maintenance of Registration.

A developer shall give the commission written notice of a change of the developer's permanent mail address within 10 days of the occurrence of the change.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 19, 2005.

TRD-200504697

Loretta DeHay

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: December 4, 2005

For further information, please call: (512) 465-3900



## PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

### CHAPTER 571. LICENSING

#### SUBCHAPTER A. EXAMINATION

##### 22 TAC §571.18

The Texas Board of Veterinary Medical Examiners ("Board") proposes amendments to §571.18 concerning Provisional Licensure. The section authorizes the Board to issue a provisional license to a person who is seeking regular licensure in Texas but wants to practice while awaiting the regular State Board Examination. The 79th Legislature amended the Veterinary Licensing Act, Chapter 801, Occupations Code, deleting the requirement that a person acquiring a provisional license must be sponsored by another veterinarian who will supervise the provisional licensee's practice during the term of the provisional license. In accordance with the legislative directive, the sponsorship requirement in the section is removed. Other minor amendments are made to increase the accuracy of the procedure used by the Board to process an application for provisional licensure.

Mr. Ron Allen, Executive Director, has determined that for the first five-year period the amended section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Allen has also determined that for the first five years the section is in effect the public benefit anticipated as a result of enforcing the amended section will be to remove unnecessary impediments to practice by provisional licensees in accordance with the wishes of the Legislature, while maintaining high levels of professional competence. There will be no effect on small or micro businesses. There will be no economic cost to persons required to comply with the amended section as proposed.

Comments on the proposed amendments may be submitted in writing to Julie Barker, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701, phone

(512) 305-7555, fax (512) 305-7556, and will be accepted for 30 days following publication in the *Texas Register*.

The amendments are proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151 (a) which states that the Board may adopt rules necessary to administer the chapter. The amendments affect the Veterinary Licensing Act, Occupations Code, §801.257 relating to Provisional License.

§571.18. Provisional Licensure.

(a) The Board may issue a provisional license to a person seeking regular licensure in Texas. The Board may not issue, reissue, extend, or renew a provisional license to an individual who has previously taken and failed any examination offered by the Board and required to obtain a Texas license.

(b) The Board may grant a provisional license containing specific practice restrictions to a person who meets the following criteria:

(1) proof of a current license in good standing in another state or jurisdiction of the United States that has licensing requirements that are substantially equivalent to the requirements of the Veterinary Licensing Act, Texas Occupations Code, Chapter 801; [-]

(2) proof of receipt of a passing score on the national examination or NAVLE, except that the [The] Board may, upon written petition of the applicant, provide an exception to this requirement based on the applicant's satisfaction of the other requirements of this section and consideration of factors set out in section 571.3(b)(2) of this title (relating to Eligibility for Examination and Licensure); [-]

[(3) proof of sponsorship by a veterinarian licensed by the Board who will directly supervise the provisional licensee's practice during the term of the provisional license. An applicant requesting waiver of the sponsorship requirement due to hardship must make a personal appearance before the Board to obtain a waiver.]

[(3) [(4)] a passing score of 85 percent on the Board's jurisprudence examination ; [-]

[(4) [(5)] payment of the required application fee; [-]

[(5) [(6)] proof of graduation from a college of veterinary medicine accredited by the Council on Education of the American Veterinary Medical Association (AVMA) or an Educational Commission for Foreign Veterinary Graduates (ECFVG) Certificate or a Program for Assessment of Veterinary Education Equivalence (PAVE) Certificate; and [-]

[(6) [(7)] proof of veterinary experience, [-] which may [This requirement can] be satisfied by letter of reference from at least two veterinary employers or persons with direct knowledge of the applicant's veterinary practice and experience.

(c) The Board's Executive Director will issue a provisional license to an applicant following verification of the requirements set out in subsection (b) of this section[-] and receipt of the documents and fee required in subsection (d) of this section.

(d) An applicant for a provisional license must submit completed information on an application form designated by the Board, together with the following [all] required supporting documentation [but not limited to]:

(1) a letter of good standing from each jurisdiction in which the applicant is currently licensed or has been previously licensed; [-]

(2) a certified copy of the applicant's veterinary school transcript including a graduation date; [-]

(3) a certified copy of the applicant's birth certificate; [-]



(4) a certified report from the official reporting service verifying that the applicant passed the national examination or the NAVLE, subject to a petition by the applicant for an exception to this requirement in accordance with subsection (b)(2) of this section; ~~[-] and~~

~~[(5) a letter from the applicant's sponsoring veterinarian acknowledging responsibility for direct supervision of the provisional licensee.]~~

(5) ~~[(6)]~~ an application fee in an amount set by the Board and contained in section 577.15 of this title ~~[these rules]~~ (relating to Fee Schedule).

~~[(e) The state board jurisprudence examination will be conducted on request at the earliest time practical for the Board.]~~

(c) ~~[(f)]~~ A provisional license is valid until the earlier of:

(1) 14 days after the first available regularly scheduled SBE ~~[licensure examination]~~;

(2) announcement of the results of the first available SBE ~~[regularly scheduled examination]~~; or

(3) cancellation, ~~[pursuant to this section. The Board will issue a regular license to a provisional licensee who has passed all examinations administered by the Board and required to obtain a Texas license. The Board will cancel a provisional license] if the provisional licensee fails to appear at the first available regularly scheduled SBE [examination] held after the issuance of the provisional license. [The Board will not reissue, extend, or renew the provisional license of a person who has failed any examination offered by the Board.]~~

(f) ~~[(g)]~~ The Board shall process any additional requirements necessary to complete a provisional licensee's application for regular licensure within 180 days after the issuance of a provisional license. The Board is not required to conduct a licensure examination if a regularly scheduled SBE ~~[licensure examination]~~ does not occur within the 180-day period.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 19, 2005.

TRD-200504729

Julie A. Barker

Executive Assistant

Texas Board of Veterinary Medical Examiners

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For further information, please call: (512) 305-7555



## CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

### SUBCHAPTER G. OTHER PROVISIONS

#### 22 TAC §573.64

The Texas Board of Veterinary Medical Examiners ("Board") proposes amendments to §573.64, concerning Continuing Education Requirements. The section requires that a veterinarian annually acquire at least 17 hours of continuing education in veterinary medicine. The 79th Legislature amended the Veterinary Licensing Act (Chapter 801, Occupations Code) to require the

Board to monitor and audit continuing education hours claimed by veterinarians. Proof of courses claimed, which may include certificates of completion, is now required. The Act was also amended to allow the Board to require a licensee who does not complete the 17 hours of continuing education in a given year to make up the missing hours in later years. The Legislative amendments also provide that the Board may require a licensee who has been disciplined to participate in a continuing education program as part of the disciplinary action. The hours received under this program shall be in addition to the 17 hours received of all licensees.

The section has been re-written to include these changes mandated by the Legislature. Proof of on-line interactive courses taken and self-study must be provided. A licensee renewing his or her license each year must provide a statement that the required continuing education hours have been obtained. A licensee renewing electronically must input an affirmation to that effect. Acceptable continuing education now includes on-line programs that provide for interactive participation by the licensee, and self-study material. Hours claimed for on-line programs cannot exceed 10 hours, and self-study hours cannot exceed three hours. At least seven hours must be obtained from personal attendance at live, on-site courses. Thus, if a licensee wants to obtain only the 17 required hours in one year, the maximum hours claimed for on-line and self-study course must be reduced to accommodate the seven hours required for live courses.

Mr. Ron Allen, Executive Director, has determined that for the first five-year period the amended section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Allen has also determined that for the first five years the section is in effect the public benefit anticipated as a result of enforcing the amended section will be to encourage licensee compliance with continuing education requirements, thus assuring the public of continued competence in the profession. There will be no effect on small or micro businesses. There will be no anticipated economic cost to persons required to comply with the amended section as proposed.

Comments on the proposed amendments may be submitted to Julie Barker, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 2-330, Austin, Texas 78701-3998, phone (512) 305-7555, fax (512) 305-7556, and will be accepted for 30 days following publication in the *Texas Register*.

The amendments are proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.306 which states that the Board may adopt rules necessary to administer the chapter.

The amendments affect the Veterinary Licensing Act, Texas Occupations Code, §801.307 which pertains to continuing education requirements.

§573.64. *Continuing Education Requirements.*

(a) Requirements

(1) Seventeen (17) hours of acceptable continuing education shall be required annually for renewal of all types of Texas licenses except as provided in subsection (e) of this section. Licensees who successfully complete the Texas State Board Licensing Examination shall be allowed to substitute the examination for the continuing education requirements of the calendar year in which they were examined.

(2) [(A)] A licensee shall obtain the required 17 hours of acceptable continuing education during the calendar year immediately preceding the licensee's application for license renewal. Should a licensee obtain acceptable continuing education hours during the year in excess of the required 17 hours, the licensee may carry over and apply the excess hours to the requirement for the next year. A maximum of 17 hours may be carried over each year.

[(B) Effective Date. Seventeen hours of continuing education shall be required in 2003 for license renewal in 2004. Beginning with the continuing education requirement for license renewal in 2004, licensees may carry over acceptable continuing education hours pursuant to subsection (a)(1)(A) of this section. For example, acceptable continuing education hours obtained in 2003 which are in excess of the 17 hours required for renewal in 2004, may be carried over and applied to the continuing education requirement for renewal in 2005, subject to the provisions of subsection (a)(1)(A).]

(3) [(2)] Hardship extensions may be granted by appeal to the Executive Director of the Board. The executive director shall only consider requests for a hardship extension from licensees who were prevented from completing the required continuing education hours due to circumstances beyond the licensee's control. Requests for a hardship extension must be received in the Board offices by no later than December 15. Should such extension be granted, thirty-four (34) hours of continuing education shall be obtained in the two-year period of time that includes the year of insufficiency and the year of extension. Licensees receiving a hardship extension shall maintain records of the thirty-four (34) hours of continuing education obtained and shall file copies of these records with the Board by attaching the records to the license renewal application submitted following the extension year, or by sending them to the Board separately if the licensee submits his or her application electronically (on-line).

(b) Proof of Continuing Education. The licensee shall sign a statement on the licensee's annual license renewal form attesting to the fact that the required continuing education hours have been obtained. If the licensee renews his license electronically (on-line), the licensee shall input an affirmation that the required continuing education hours have been obtained. The licensee shall maintain records which support the signed statement or affirmation. [Such records may include continuing education certificates, attendance records signed by the presenter, and/or receipts for meeting registration fees.] These documents must be maintained for the last three (3) complete renewal cycles and shall be available at the practice location for inspection to Board investigators upon request. Proof of attendance at live, on-site courses may require sign-in procedures, course checklists, certificates of course completion and other measures as directed by the Board. For proof of on-line interactive courses, the licensee must provide a certificate from the provider showing the nature of the course, date taken, and the hours given. For proof of self-study, the licensee must provide a signed statement showing details, including dates, of the articles or courses read, videos observed, or audios listened to, and hours claimed.

(c) Acceptable Continuing Education.

(1) Continuing Education hours shall be acceptable if they relate to clinical matters and/or practice management.

(2) [(4)] Acceptable continuing education hours shall be [hours] earned by:

(A) attending meetings sponsored or co-sponsored by the American Veterinary Medical Association (AVMA), AVMA's affiliated state veterinary medical associations and/or their continuing education organizations, AVMA recognized specialty groups, regional veterinary medical associations, local veterinary medical associations, and veterinary medical colleges;

(B) taking correspondence courses;

(C) participating in verifiable, on-line and video programs or other telecommunication discussions that provide for interactive participation by the licensee [listening to audio tapes or CD's, or viewing video tapes or other devices that transmit a video image, or by participating in other telecommunications discussions];

(D) self study, which includes reading articles in professional journals or periodicals, listening to audio tapes or CD's, or viewing video tapes or similar devices that transmit a video image [participating in on-line courses and discussions]; or

(E) any other methods approved by the Executive Director and a veterinarian Board member appointed by the Board President, or approved by the Registry of Approved Continuing Education (RACE) of the American Association of Veterinary State Boards.

(3) [(2)] The Board shall accept continuing education hours obtained as a requirement of disciplinary action.

(d) Distribution of Continuing Education Hours

(1) Of the required seventeen (17) hours of continuing education, no more than five (5) hours may be derived from either:

(A) correspondence courses; or

(B) practice management courses.

(2) Hours claimed for self study shall not exceed three (3) hours [Hours claimed for listening to audio and viewing video devices or participating in telecommunications presentations shall be limited to no more than five (5) hours].

(3) Hours claimed for interactive, participatory programs shall not exceed 10 hours [Interactive on-line hours that are verifiable may be claimed without limitation up to seven (7) hours].

(4) Notwithstanding the allowable hours provided in paragraphs (1) - (3) of this subsection, at least seven (7) hours must be obtained from personal attendance at live courses, seminars and meetings providing continuing education.

(e) Exemption from Continuing Education Requirements. A licensee is not required to obtain or report continuing education hours, provided that the licensee submits to the Board sufficient proof that during the preceding year the licensee was:

(1) in retired status; [;]

(2) a veterinary intern or resident; [;] or

(3) out-of-country on charitable, military, or special government assignments for at least nine (9) months in a year; or

(4) on inactive status. Licensees on inactive status may voluntarily acquire continuing education for purposes of reinstating his/her license to regular status.

(f) Make up Hours. The Board may require a licensee who does not complete the 17 hours of continuing education to make up the missed hours in later years. Hours required to be made up in a later year are in addition to the 17 hours required to be completed in that year.

(g) [(f)] Disciplinary Action for Non-compliance. Failure to complete the required hours without obtaining a hardship extension from the executive director, failure to maintain required records, falsifying records, or intentionally misrepresenting programs for continuing education credit shall be grounds for disciplinary action by the Board.

(h) Participating in a Continuing Education Program as a Disciplinary Action.

(1) The Board may require a licensee who violates the Veterinary Licensing Act or the Board's Rules to participate in a program to acquire continuing education.

(2) Continuing education hours required under this subsection shall be in addition to the 17 hours required of all licensees, and shall be

(A) based on the seriousness of the violation; and

(B) relevant to the violation committed by the licensee holder.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 19, 2005.

TRD-200504731

Julie A. Barker

Executive Assistant

Texas Board of Veterinary Medical Examiners

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For further information, please call: (512) 305-7555



## 22 TAC §573.66

The Texas Board of Veterinary Medical Examiners ("board") proposes amendments to §573.66, concerning Monitoring Licensees' Compliance. The amended section sets out the Board's compliance monitoring program for licensees. The section is being amended to include new procedures for inspections by mail, in addition to the traditional on-site inspections. The amended section spells out the types of items that a licensee can expect to be asked to produce in an inspection. A licensee is given a period of time to correct any deficiencies noted during an inspection. If the noted deficiencies are not timely corrected, the section provides that the inspection will become an investigation and the Board's complaint procedure will be invoked. Unannounced inspections are authorized to determine if a licensee has corrected previously noted deficiencies.

Mr. Ron Allen, Executive Director, has determined that for the first five-year period the amended section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Allen has also determined that for the first five years the section is in effect the public benefit anticipated as a result of enforcing the amended section will be to encourage licensee compliance with the Veterinary Licensing Act and Board rules, thereby assuring the public that standards of the profession are being met. There will be no effect on small or micro businesses. There will be no economic cost to persons required to comply with the amended section as proposed.

Comments on the proposed amendments may be submitted in writing to Julie Barker, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701, phone (512) 305-7555, fax (512) 305-7556, and will be accepted for 30 days following publication in the *Texas Register*.

The amendments are proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a) which

states that the Board may adopt rules necessary to administer the chapter.

The amendments affect the Veterinary Licensing Act, Occupations Code, §801.501 relating to Monitoring License Holder.

*§573.66. Monitoring Licensee Compliance [Monitoring Licensees' Compliance with Article 8890].*

(a) The Board shall conduct a compliance monitoring program to ensure that licensees comply with the requirements of Chapter 801, Texas Occupations Code (the Veterinary Licensing Act) and the Board's rules. [in which veterinary practices are inspected on an unannounced basis by board investigators to ensure that licensees are complying with the requirements of this Act. Those items to be inspected include, but are not limited to; display of licenses, compliance with required consumer information in Texas Civil Statutes Article 8890, §18A(b); continuing education requirements; sanitation; patient record completion; drug security; drug accountability; and compliance with other state and federal drug laws.]

(b) The Board's compliance monitoring program shall include on-site inspections of veterinary practices and inspections by mail.

(1) On-site inspections shall include, but are not limited, to the following items:

(A) display of license and current renewal certificate;

(B) properly posted consumer information;

(C) documentation of continuing education hours;

(D) sanitation;

(E) patient record keeping;

(F) controlled substance record keeping; and

(G) possession of appropriate controlled substance registrations and certificates.

(2) Inspections by mail shall request a veterinarian to provide the following non-exclusive items:

(A) proof of continuing education hours;

(B) copies of controlled substance registrations and certificates;

(C) copies of four medical records concerning the diagnosis and treatment of a patient;

(D) copy of the last page of the veterinarian's controlled substance log book for each controlled substance possessed by the veterinarian; and

(E) a notarized statement verifying that the licensee is in compliance with Board rules concerning consumer information, maintenance of sanitary premises, display of license and degrees, and notification of licensee addresses.

[(b) Inspection reports will be completed by investigators in duplicate. Copy 1 will be processed and filed in the licensee's personal file when all deficiencies have been corrected by the licensee. Copy 2 will be left with the licensee.]

(c) After an on-site inspection, licensees [Licensees] will normally be given 45 days to correct deficiencies and provide written documentation of the corrections. Licensees will normally be given 30 days to respond to an inspection by mail. [Licensees who are delinquent will be contacted by certified mail, requesting them to answer within 15 days of receipt of letter.] If no timely response is received within that time period, the inspection process will become an investigation [status of "inspection" will be changed to "investigation"] and

the Board will follow the formal investigative procedure [will be followed].

(d) After an initial inspection, if the licensee makes required corrections to noted deficiencies, investigators may recommend to the director of enforcement to close a compliance inspection deficiency [discrepancy] to "no violation" [voluntary compliance] within the spirit and intent of the program, except when a deficiency [violation is identified that] involves [:] flagrant disregard of the law, including [allowing] illegal practices [practice]; improper use of prescription drugs; [:] failure to account for drugs dispensed or administered; failure to comply with controlled substance registration requirements, continuing education requirements, and sanitation; and drug diversion and/or abuse. Where such violations are noted, [In these instances] the compliance inspection shall be terminated and the investigator will open an investigation [will be opened] and the violations [all such matters] will [must] be referred to the director of enforcement [chief investigator] for review as a complaint.

(e) When in a subsequent inspection a licensee [is inspected sometime after an initial inspection and the licensee] is found to have failed to correct those deficiencies noted in the prior inspection, the investigator will advise the director of enforcement and the licensee that the licensee [he] has continued to violate the Veterinary Licensing Act and/or Board rules [Rules of Professional Conduct and those violations will be reported to the secretary of the board for whatever disciplinary action he/she deems appropriate].

(f) The Board may, on an unannounced basis, inspect licensees who have been ordered to perform certain acts as a result of a previous inspection [Licensees that are ordered by the board to perform certain acts may be inspected on an unannounced basis] to verify that the licensees performed [perform] the required acts. If the licensee is found to have refused or failed to comply with the Board [board] order, the investigator will prepare [advise him that] a report [will be prepared] documenting the failure to comply and [that] the report will be submitted to the [secretary of the] Board [board] for appropriate [whatever] disciplinary action [he/she deems appropriate].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Julie A. Barker

Executive Assistant

Texas Board of Veterinary Medical Examiners

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For further information, please call: (512) 305-7555



## 22 TAC §573.76

The Texas Board of Veterinary Medical Examiners ("Board") proposes new section §573.76 concerning Sterilization of Animals from Releasing Agencies. The section reflects amendments by the 79th Legislature to the Health and Safety Code, which require that animals released for adoption from animal pounds, shelters, or humane organizations receive an identification marker in a manner authorized by the Board. The new section requires that sterilized dogs and cats released for adoption be identified by microchips or tattoos, or both. New owners of adopted animals that have been microchipped must provide

sterilization information to the chip manufacturer's database. Tattoos must meet federal standards for tattooing promulgated by the Food and Drug Administration.

Mr. Ron Allen, Executive Director, has determined that for the first five-year period the amended section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Allen has also determined that for the first five years the section is in effect the public benefit anticipated as a result of enforcing the amended section will be to provide more accurate identification of animals that have been sterilized, thus avoiding questions that may arise if subsequent owners of a dog or cat do not know if the animal has been sterilized, especially if the animal has been chemically sterilized. There will be no effect on small or micro businesses. There will be no economic cost to persons required to comply with the amended section as proposed.

Comments on the proposed amendments may be submitted in writing to Julie Barker, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701, phone (512) 305-7555, fax (512) 305-7556, and will be accepted for 30 days following publication in the *Texas Register*.

The amendments are proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter. The amendments affect the Health and Safety Code, Chapter 828, relating to dog and cat sterilization.

### §573.76. Sterilization of Animals from Releasing Agencies.

(a) Definitions. The following words, when used in this section, have the following meaning:

(1) Releasing agency--a public or private animal pound, shelter, or humane organization. This term does not include an individual who occasionally renders humane assistance or shelter in the individual's home to a dog or cat.

(2) Animal--a dog or cat.

(3) Microchip--a transponder that is placed under an animal's skin by an injector and can be read by a microchip scanner.

(4) Tattoo--a permanent etching formed by injecting ink into the basal layer of the epidermis of an animal.

(b) Sterilization required. A new owner of an animal released from a releasing agency must have the animal sterilized in accordance with Chapter 828, Health & Safety Code.

(c) Identification markers. An animal sterilized under this section must be identified by a microchip and/or a tattoo indicating that it has been sterilized.

(1) A new owner of an animal with a microchip shall be responsible for providing information to the data base registry of the microchip manufacturer indicating that the animal has been sterilized.

(2) A tattoo must:

(A) be placed on the inside of the animal's thigh near the abdomen or on the caudal-ventral abdomen;

(B) be imprinted with ink that is manufactured in the United States;

(C) meet the standards of the federal Food and Drug Administration for tattooing;

(D) be of a contrasting color to the predominant color of the skin in which it is tattooed; and

(E) consist of the universal symbol for male or female overlain by a slash through the circle to indicate sterilization.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 19, 2005.

TRD-200504728

Julie A. Barker

Executive Assistant

Texas Board of Veterinary Medical Examiners

Proposed date of adoption: February 15, 2006

For further information, please call: (512) 305-7555



## **TITLE 28. INSURANCE**

### **PART 1. TEXAS DEPARTMENT OF INSURANCE**

#### **CHAPTER 34. STATE FIRE MARSHAL SUBCHAPTER E. FIRE EXTINGUISHER RULES**

##### **28 TAC §§34.506, 34.507, 34.511, 34.514 - 34.517, 34.519 - 34.521, 34.524**

The Texas Department of Insurance proposes amendments to §§34.506, 34.507, 34.511, 34.514 - 34.517, 34.519 - 34.521, and new §34.524 concerning fire extinguisher rules. Insurance Code Article 5.43-1, §9 authorizes the appointment of a Fire Extinguisher Advisory Council to assist the Commissioner in the review and formulation of rules. The Fire Extinguisher Advisory Council assisted in the review and formulation of the proposed rules and recommended changes to the Commissioner. The amendments are necessary to clarify the intent of the existing rules, add requirements to implement the latest improved nationally recognized safety standards, revise requirements to accommodate and facilitate the latest state-of-the-art industry practices, delete outdated language, establish a new specialized type of pre-engineered fixed fire system license for residential cooking appliances, provide a method to notify users of certain performance levels of fixed fire extinguisher systems for commercial cooking areas, and amend licensing administrative procedures to enable the State Fire Marshal's Office (SFMO) to more equitably and efficiently regulate the activities of this industry.

The proposed amendments to §34.506 change the name of the number required by the U. S. Department of Transportation for a DOT Specification Fire Extinguisher Cylinder and a DOT Non-specification Fire Extinguisher Cylinder from "classification number" to "specification number" to be consistent with the terminology used by that department. This is necessary to maintain consistency between the federal and state enforcement agencies.

The proposed amendments to §34.507 adopt by reference certain standards and recommended practices of the National Fire Protection Association (NFPA). The proposed amendments replace current standards with the most recent editions of the adopted standards and recommended practices which are

revised and published every three years by NFPA. The NFPA standards and recommended practices incorporate the current state-of-the-art technology in the design, use, installation, service and maintenance of fire protection equipment and systems. The proposed amendments are necessary to maintain the minimum standards of current technology for fire extinguishers and fixed fire extinguisher systems in Texas. Additionally, other units of government in Texas are adopting these nationally developed standards, and uniformity of standards enables the fire extinguisher firms, the local fire officials and the public to more readily know the standards and enables the fire extinguisher firms and the local fire officials to implement and enforce them consistently throughout the state. Changes are proposed to the standards concerning the installation, maintenance and servicing of portable fire extinguishers and fixed fire extinguisher systems. Additionally, the proposed amendments require that a copy of the adopted standards be maintained at the state fire marshal's office for public viewing.

The proposed amendments to §34.511 establish a new specialized Type R license for the exclusive installing, certifying, or servicing of pre-engineered fixed fire extinguishing systems for residential cooking areas. The amendments are necessary to increase the quantity of fire protection systems installed to protect residential cooking areas, where most home fires occur, by increasing the workforce available to install these types of systems. The technical qualifications for the proposed license can be limited, and the proposed amendment waives the requirement that one hold an apprentice permit prior to the issuance of the license. The proposed amendments also clarify that the Type PL license is required for the planning, supervising, certifying, installing, or servicing of all fixed systems other than pre-engineered systems and that the Type A license is required for certifying or servicing the installation of all fixed fire extinguisher systems other than pre-engineered systems and for installing, certifying, or servicing of all pre-engineered fixed fire extinguisher systems.

The proposed amendment to §34.514 deletes the requirement for a Type A certificate of registration applicant and, in certain instances, the holder of a Type A certificate of registration subsequent to receipt of the original certification to provide statements of experience and educational information supporting the firm's qualifications to perform the duties permitted by the certificate of registration. This requirement is unnecessary because the technical ability to perform the duties permitted by the registration is actually a function of the qualifications and experience of the licensed employees and not the business acumen of a firm. Additionally, the firm's activities are limited to the specific licenses of its employees.

The proposed amendment to §34.515 sets the initial, renewal and late fees for the proposed Type R license consistent with the existing fees for similar licenses.

The proposed amendment to §34.516 requires that an applicant for the proposed Type R license pass a test prior to issuance of the license and specifies that the test include questions on Article 5.43-1 of the Insurance Code and this subchapter.

The proposed amendments to §34.517 clarify that licensed individuals authorized to certify pre-engineered fixed fire extinguishing systems, and not just Type A or Type PL licensees, may install, service or certify the type of fire extinguisher system as permitted under the limitations of their respective license. Additionally, the amendments clarify that an individual employed by a registered fire extinguisher firm may install a fixed fire extin-

guisher system, other than a pre-engineered fixed system, without a license, if performed under the direct supervision of a Type A or Type PL licensee.

The proposed amendments to §34.517 also specify that after January 1, 2008, the design and equipment of all existing fixed fire extinguisher systems for the protection of commercial cooking areas must comply with the minimum standards of UL 300 or a red tag shall be attached. Continual technological advancements in modern cooking equipment and the use of new cooking oils make the extinguishment of today's fires more difficult. Therefore a new product performance test standard, UL 300, was developed by Underwriters Laboratories Inc. In November of 1994 this resulted in the manufacturing and sales of new equipment and extinguishing agents for the protection of these hazard areas. Although most systems in common use at the time could extinguish a fire, none could pass this new more difficult test standard. Existing systems, installed before the adoption of UL 300, continue to be listed as long as they are maintained according to their listed manufacturer's maintenance manual. However as maintenance parts for these fire protection systems become unavailable and cooking appliances are replaced, the old fire protection systems cannot be maintained and may or may not extinguish a typical fire when needed. Many of the existing older systems have been voluntarily replaced. This proposed amendment will permit a gradual replacement of fire protection equipment to phase in the cost of the new equipment necessary to maintain adequate protection to the public and reduce the expense shock of the necessary replacement. This new fire protection equipment is currently required to be used when installing a new fire protection system for commercial cooking appliances.

Additionally, proposed amendments to §34.517 require that the design, performance and equipment for all dry chemical fire extinguishing systems, installed after January 1, 2006, meet the testing requirements of Underwriters Laboratory test standard UL 1254. This is necessary to ensure that these systems comply with the latest UL standard.

The proposed amendment to §34.519 clarifies that licensed individuals may certify the type of fire extinguisher system as permitted under the limitations of their respective license.

The proposed amendment to §34.520 specifies that after any service is performed on a fire extinguisher or fixed fire extinguisher system one of three types of tags must be attached to differentiate the status of the equipment. This amendment is necessary to clarify the types of tags that may be attached.

The proposed amendments to §34.521 clarify that the three days within which a written notice of a red tag condition must be submitted to the owner and authority having jurisdiction (AHJ) means three business days. Oral notification of the condition must still be made immediately to the owner and within 24 hours to the AHJ, where available.

Proposed §34.524 sets forth specific criteria regarding the color, content, placement, duration, use and procedures concerning the application of a yellow tag. This tag is necessary to notify the property owner and AHJ in advance that certain fixed fire extinguisher systems, which are used to protect commercial cooking appliances and areas, may not perform as expected and that a red tag will be attached starting on January 1, 2008, in accordance with the proposed amendments to §34.517.

The proposed effective date of the proposed rules is March 1, 2006.

Paul Maldonado, State Fire Marshal, has determined that for each year of the first five years the proposed amendments are in effect, there will be no fiscal impact to state government. There will be no fiscal implications for local government as a result of enforcing or administering the proposal, and no effect on the local economy or local employment.

Mr. Maldonado has determined that for each year of the first five years the sections are in effect, the public benefits anticipated as a result of enforcing and administering the proposed amendments and proposed new section will be the mandated use of the latest technology and standards by the industry which will result in an increased level of safety to the public who utilize and rely on fire extinguishers and fixed fire extinguisher systems. The estimated cost to purchase all of the proposed updated NFPA standards is approximately \$300, but some extinguisher firms will only need to purchase the applicable standards in their area of expertise, so the cost may actually be less. Additionally, the establishment of a new specialized license should stimulate and increase the installation of fire protection systems for residential cooking areas. The estimated initial cost for the new Type R license for residential cooking areas is less than \$150. This estimate includes the initial license fee, test fee and possible travel expenses if the test is administered by the SFMO. The requirement to attach a red tag after January 1, 2008, on all fixed fire extinguisher systems for commercial cooking areas that do not comply with the UL 300 test standard and the adoption of a yellow tag and notification process should assist in bringing a possible hazardous situation to the attention of those using these systems and alert the responsible individuals in advance of the possible need to replace their systems or take other appropriate action. The cost to purchase new yellow tags is approximately \$35 for 1,000 tags. For those property owners choosing to replace or upgrade the fire protection system for their cooking areas, the cost is estimated at \$1,000 to \$4,000 per system depending on the quantity of appliances and size of the cooking area. Additionally, the reduction in administrative requirements and increased clarity of the rules will increase the productivity of the firms registered to install and service fire extinguisher and fixed fire extinguisher systems. The cost to a fire extinguisher firm or person in the fire extinguisher industry qualifying as a small business under the Government Code §2006.001 will be the same as the cost to the largest business because the cost is not dependent upon the size of the business but rather is the same cost licensees incur for each fire protection system they sell, plan, install, service or certify. It is neither legal nor feasible to waive the proposed amendments for small or micro businesses because requirements for installation and service of fire extinguisher systems must be applied consistently to large, small and micro businesses in the interest of safeguarding lives and property as required by the Insurance Code Article 5.43-1.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 4, 2005 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Paul Maldonado, State Fire Marshal, Mail Code 112-FM, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. A request for a public hearing should be submitted separately to the Office of the Chief Clerk.

The amendments are proposed under Insurance Code Article 5.43-1 and §36.001. Insurance Code Article 5.43-1, §2, provides that the Commissioner of Insurance may adopt rules nec-

essary for the administration of this article, including rules that adopt recognized standards such as, but not limited to, those of the National Fire Protection Association, those recognized by federal law or regulation, and those published by any nationally recognized standards-making organization, or the manufacturer's installation manuals. Under Article 5.43-1, §7, the Commissioner is required to adopt rules governing applications and qualifications for licenses, permits, and certificates issued under this article. Article 5.43-1, §8, provides that the Commissioner shall formulate and administer rules determined to be essentially necessary for the protection and preservation of life and property, specifically applicable to installing and servicing fixed fire extinguisher systems, including the examination of license applicants. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following article is affected by this proposal: Insurance Code Article 5.43-1.

*§34.506. Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (6) (No change.)

(7) DOT Specification Fire Extinguisher Cylinder--All fire extinguisher cylinders manufactured, tested and stamped with the specification ~~[classification]~~ number as required by the United States Department of Transportation.

(8) DOT Nonspecification Fire Extinguisher Cylinder--All fire extinguisher cylinders manufactured and tested but not stamped with a specification ~~[classification]~~ number as required by the United States Department of Transportation. These cylinders may be marked by a label with the words "Meets DOT Requirements."

(9) - (19) (No change.)

*§34.507. Adopted Standards.*

The commissioner adopts by reference in their entirety, except as noted, the following copyrighted standards and recommendations [as ~~adopted~~] in this subchapter. If a standard refers to a provision in a specific edition of another standard, the provision is applicable only if it does not conflict with the adopted standard shown in this section. The standards are published by and available from the National Fire Protection Association, Inc., (NFPA), Batterymarch Park, Quincy, Massachusetts 02269. A copy of the standards shall be kept available for public inspection in the state fire marshal's office.

(1) NFPA 10-2002 [1998], Standard for Portable Fire Extinguishers, except that the date, June 30, 1998, in ~~[exception to]~~ paragraph 4.3.2.1 [2-3.2] shall be deleted and the following date ~~[wording]~~ substituted: "January 1, 2006 [~~Exception: Extinguishers installed specifically for these hazards prior to June 30, 2004.~~]"

(2) NFPA 11-2002 [1998], Standard for Low Expansion Foam and Combined Agent Systems.

(3) - (4) (No change.)

(5) NFPA 12A-2004 [1997], Standard on Halon 1301 Fire Extinguishing Systems.

(6) NFPA 15-2001 [1996], Standard for Water Spray Fixed Systems for Fire Protection.

(7) NFPA 16-2003 [1999], Standard for the Installation of ~~[Deluge]~~ Foam-Water Sprinkler and Foam-Water Spray Systems.

(8) NFPA 17-2002 [1998], Standard for Dry Chemical Extinguishing Systems, except that paragraph 9.3.2 in conjunction with 1.3.2 [7-3.2] shall only apply to new or modified installations after July 1, 1996, in accordance with §34.517(f) of this subchapter (relating to Installation and Service).

(9) NFPA 17A-2002 [1998], Standard for Wet Chemical Extinguishing Systems, except that paragraph 5.1.1 in conjunction with 1.4.1 [3-1.1] shall only apply to new or modified installations after July 1, 1996, in accordance with §34.517(f) of this subchapter.

(10) (No change.)

(11) NFPA 25-2002 [1998], Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems.

(12) NFPA 96-2001 [1998], Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations, except that paragraph 7-2.2 shall only apply to new or modified installations after July 1, 1996, in accordance with §34.517(f) of this subchapter.

(13) NFPA 2001-2004 [2000], Standard on Clean Agent Fire Extinguishing Systems.

*§34.511. Fire Extinguisher Licenses.*

(a) Types of licenses. Each license must be identified by type, which indicates the business activity authorized under the license.

(1) Type PL--For the planning, supervising, certifying, installing, or servicing of all fixed systems other than pre-engineered systems. A system planning licensee may also perform, supervise, or certify the installation or servicing of all pre-engineered fixed systems and portable fire extinguishers.

(2) Type A--For certifying or servicing the installation of all fixed fire extinguisher systems other than pre-engineered systems or for installing, certifying, or servicing of all pre-engineered fixed fire extinguisher systems and the certifying and servicing of portable extinguishers.

(3) - (4) (No change.)

(5) Type R--For installing, certifying, or servicing of pre-engineered fixed residential range top fire extinguisher systems.

(b)- (c) (No change.)

(f) Restrictions.

(1) - (4) (No change.)

(5) It shall not be necessary for the applicant of a Type R license to hold an apprentice permit prior to the issuance of a Type R license.

*§34.514. Applications.*

(a) Certificates of registration.

(1) - (3) (No change.)

(4) [Original applications for Type A certificates must be accompanied by a statement from the applicant which details the experience and educational information supporting and establishing the firm's qualifications to plan, install, or service fixed systems handled by the firm. Such statement may be further supported by documentation from manufacturers of pre-engineered fixed systems or fixed system equipment relative to the applicant's receipt of training and education regarding the installation and service of their products.]

[(5) Subsequent to receipt of a certificate of registration, holders thereof who commence to sell, install, and service pre-engineered fixed systems or system equipment other than those handled at the time of original certification must, within 60 days, forward a similar

statement to the state fire marshal concerning the firm's qualification to install or service such other fixed systems. The statement must be accompanied by the names and license numbers of employees who have received necessary training in installing and servicing the additional systems.]

[(6)] Applications for Type C certificates must be accompanied by a copy of the DOT letter registering the applicant's facility which awards a registration number to the facility.

(5) [(7)] The applicant must comply with the following requirements concerning liability insurance.

(A) - (F) (No change.)

(b) Fire extinguisher licenses.

(1) (No change.)

(2) Applications for Type A and Type K licenses must be accompanied by a written statement from the certificate holder (employer) certifying that the applicant meets the minimum requirements of §34.511(f)(4) of this subchapter (relating to Fire Extinguisher Licenses) and is competent to install or service fixed systems.

(3) - (4) (No change.)

(c) - (g) (No change.)

#### §34.515. Fees.

(a) - (b) (No change.)

(c) Fees are as follows.

(1) Certificates of registration [(Type A, B, and PL)]:

(A) - (H) (No change.)

(2) (No change.)

(3) Fire extinguisher license (Type A, B, R and K):

(A) - (D) (No change.)

(4) - (8) (No change.)

(d) - (e) (No change.)

#### §34.516. Tests.

(a) Applicants for licenses are required to take a test and obtain at least a grade of 70% on the test. Tests may be supplemented by practical tests or demonstrations deemed necessary to determine the applicant's knowledge and ability. The test content, frequency, location and outsource testing service shall be designated by the state fire marshal.

(1) - (4) (No change.)

(5) The Type R license test will include questions on this subchapter and Insurance Code Article 5.43-1.

(b) - (f) (No change.)

#### §34.517. Installation and Service.

(a) (No change.)

(b) The following requirements are applicable to all fixed fire extinguisher systems.

(1) (No change.)

(2) Upon completion of the installation of a pre-engineered fixed fire extinguisher system, a [Type A or Type PL] licensee authorized to certify pre-engineered fixed fire extinguishing systems under the provisions of this subchapter, must place an installation label on the system to certify that the system was installed in compliance with

the manufacturer's installation manuals and specifications or standards adopted by the commissioner in this subchapter. The licensee whose signature appears on the installation label must be present for the final test of the system prior to certification.

(3) - (4) (No change.)

(c) Pre-engineered fixed fire extinguisher systems must be installed and serviced by a licensee authorized to install or service pre-engineered fixed fire extinguishing systems under the provisions of this subchapter [Type A or Type PL licensees only].

(d) (No change.)

(e) Fixed fire extinguisher systems other than pre-engineered systems must be planned, installed, or serviced by a Type PL licensee or professional engineer. Installation and servicing of such a system may also be performed by or supervised by a Type A licensee. An employee of the registered firm may install such systems, under the direct supervision of a Type A or PL licensee, without obtaining a license.

(f) All pre-engineered fixed fire extinguishing systems, installed or modified after July 1, 1996, in accordance with NFPA 17 or NFPA 17A or NFPA 96 of the adopted standards, for the protection of commercial [restaurant] cooking areas, must meet the minimum requirements of Underwriters Laboratories, Inc., Standard 300, "Fire Testing of Fire Extinguishing Systems for Protection of Restaurant Cooking Area" (UL 300). After January 1, 2008 all existing pre-engineered fixed fire extinguishing systems, installed in accordance with NFPA 17 or NFPA 17A or NFPA 96 of the adopted standards, for the protection of commercial cooking areas, must meet the minimum requirements of Underwriters Laboratories, Inc., Standard 300, "Fire Testing of Fire Extinguishing Systems for Protection of Restaurant Cooking Area" (UL 300) or a red tag shall be attached following the procedures in §34.521 of this subchapter (relating to Red Tags).

(g) - (j) (No change.)

(k) All pre-engineered dry chemical fixed fire extinguishing systems, installed in new, remodeled or relocated protected areas after January 1, 2006, must meet the minimum requirements of the second edition (1996) or more recent edition of Underwriters Laboratories, Inc., Standard 1254, "Pre-engineered Dry Chemical Extinguishing System Units".

#### §34.519. Installation Labels for Fixed Extinguisher Systems.

(a) After an installation has been completed, an installation label must be affixed to the control head or panel of the fixed fire extinguisher system and an installation certificate form shall be sent to the state fire marshal's office. The signature of the licensee on the label certifies that the system has been installed according to law. Labels shall be five inches in height and four inches in width and shall be of the gum label type. They shall not be red in color. Installation labels shall contain only the following information in the format of the label shown in subsection (b) of this section:

(1) - (3) (No change.)

(4) the signature and license number of the [Type A or Type PL] licensee authorized to certify a fixed fire extinguishing system (a stamped signature is prohibited);

(5) - (6) (No change.)

(b) - (c) (No change.)

#### §34.520. Service Tags.

(a) (No change.)

(b) A new service tag, yellow tag or red tag, as applicable, must be attached each time service is performed.



(c) - (g) (No change.)

§34.521. Red Tags.

(a) If impairments are found which make a portable extinguisher or fixed system unsafe or inoperable, the owner or his representative must be notified in writing of all impairments. The registered firm shall notify the owner or his representative immediately and must also notify the local authority having jurisdiction (AHJ) when available within 24 hours by phone, fax, or e-mail describing the impairments or deficiencies. A copy of the written notice to the owner shall be submitted to the AHJ within 3 business days. A completed red tag must be attached to indicate that corrective action or replacement is necessary. The signature of the licensee on the tag certifies that the impairments listed indicate that the equipment is unsafe or inoperable. A service tag must not be attached until the impairments have been corrected or the portable extinguisher or fixed system replaced and the extinguisher or fire extinguisher system reinspected and found to be in good operating condition.

(b) - (e) (No change.)

§34.524. Yellow Tags.

(a) After any service of a pre-engineered fixed fire extinguishing system installed in accordance with NFPA 17, NFPA 17A or NFPA 96 of the adopted standards for the protection of commercial cooking areas, if it is determined that the system is not in compliance with the minimum requirements of Underwriters Laboratories, Inc., Standard 300, "Fire Testing of Fire Extinguishing Systems for Protection of Restaurant Cooking Area" (UL 300), a yellow tag must be completed in detail indicating all work that has been done, and then attached to the system in such a position as to permit convenient inspection and to not hamper its actuation or operation. The owner or the owner's representative must be notified in writing that the system does not comply with UL Standard 300 and that the system may not extinguish a typical fire, that a red tag shall be attached to the system after January 1, 2008, and that the owner should consider replacing or upgrading the system before that time. A copy of the written notice to the owner shall be postmarked, e-mailed, faxed, or hand delivered to the AHJ within 5 business days. The signature of the licensee on the tag certifies that the service performed complies with requirements of law.

(b) The yellow tag shall be attached instead of a service tag.

(c) Tags must be 5 1/4 inches in height and 2 5/8 inches in width.

(d) Yellow tags must be yellow in color.

(e) Tags may be printed and established for a multiple period of years.

(f) A yellow tag may be removed only by an authorized employee of a registered firm who has corrected the impairments and certified the service, an employee of the state fire marshal's office, or an authorized representative of a governmental agency with appropriate regulatory authority.

(g) Yellow tags must contain the following information in the format of the tag shown in subsection (h) of this section:

(1) "DO NOT REMOVE BY ORDER OF THE TEXAS STATE FIRE MARSHAL" (all capital letters, at least 10-point boldface type);

(2) firm's name, address, and telephone number;

(3) firm's certificate of registration number;

(4) licensee's name and license number;

(5) licensee's signature (a stamped signature is prohibited);

(6) month and year (to be punched);

(7) type of work, maintenance or service (to be punched);

(8) the inscription "SYSTEM DOES NOT COMPLY WITH STANDARD UL300. SYSTEM MAY NOT EXTINGUISH A TYPICAL FIRE." (all capital letters, at least 10-point boldface type);

(9) the inscription "This fire protection system may have met the nationally recognized testing requirements at the time it was installed. However recent changes to modern cooking appliances and/or the cooking media may prevent the fire protection system from extinguishing a typical fire. Since this system was not tested according to Underwriter's Laboratories test Standard UL 300 it will be red tagged after January 1, 2008. The owner should consider replacing or upgrading the system before that time.";

(10) name and address of owner or occupant; and

(11) service performed.

(h) Sample Yellow tag:

Figure: 28 TAC §34.524(h)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 24, 2005.

TRD-200504799

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: December 4, 2005

For further information, please call: (512) 463-6327



## SUBCHAPTER F. FIRE ALARM RULES

### 28 TAC §§34.606, 34.607, 34.610, 34.613, 34.615 - 34.617, 34.619, 34.620 - 34.626

The Texas Department of Insurance proposes amendments to §§34.606, 34.607, 34.610, 34.613, 34.615 - 34.617, and 34.619, and new §§34.620 - 34.626, concerning fire alarm rules. New §§34.620 - 34.626 are being proposed simultaneously with the proposed repeal of §§34.620 - 34.624, which appear elsewhere in this issue of the *Texas Register*. Insurance Code Article 5.43-2, §6 authorizes the Commissioner to appoint an advisory council to periodically review and recommend changes in the rules. The members of the advisory council assisted in the review and formulation of the proposed rules and recommended changes to the Commissioner. These amendments and new sections are necessary to update the regulations regarding the planning, certifying, leasing, selling, servicing, installing, monitoring, and maintaining of fire detection and fire alarm devices and systems.

The proposed amendments to §34.606 add definitions of "full-time" and "full-time employment" to clarify proposed §34.613 which requires at least one full-time licensed employee at each office location.

The proposed amendments to §34.607 adopt by reference certain standards and recommended practices of the National Fire Protection Association (NFPA). The proposed amendments replace the current standards with the most recent editions of those

standards that are revised and published by the NFPA every three years and maintain the minimum standards of design and performance of current day technology for fire alarm systems. Additionally, other units of government in Texas are adopting these standards, and uniformity of standards enables the fire alarm industry, the local fire officials and the public to be more familiar with the content of the standard and consistently enforce the requirements that are applicable in the jurisdiction. The changes to the standards are proposed to clarify existing requirements, eliminate redundant language, restructure the document for ease in use, establish new installation standards, adapt existing requirements to current state-of-the-art equipment and provide guidance on new design approaches to provide a greater level of safety to the public who rely on the performance of these fire detection and alarm devices and systems. Additionally the proposed amendments require that a copy of the adopted standards be maintained at the state fire marshal's office for public viewing.

To facilitate reader location of the monitoring requirements in the rules, the proposed amendments delete the monitoring requirements in §34.610 (Certificate of Registration) and relocate them to a more appropriate section, §34.616 titled "Sales, Installation, and Service."

The proposed amendments to §34.613 require at least one full-time licensed individual to be located at each licensed office to ensure closer proximity to the location of the installation and clarify that firms billing for monitoring services are engaged in the business of monitoring and therefore must maintain the required general liability insurance for that activity. For consistency with the requirements of Insurance Code Article 5.43-2, §5C, the proposed amendments provide that a licensee with an unexpired license who is not employed by a registered firm at the time of the license renewal may renew that license; the licensee, however, would be prohibited from engaging in any activity afforded by the license until the licensee is employed by a registered firm.

The proposed amendments to §34.615 require that an applicant for a license complete and submit all application requirements within one year of the successful completion of any test required for a license or the test is voided.

The proposed amendments to §34.616 delete the requirement that the sale or lease of a fire alarm system is to be performed under the direct supervision of a residential fire alarm superintendent (RAS) licensee or fire alarm planning superintendent (APS) licensee since the fire alarm system is required to be designed by one of these types of licensee; clarify the difference between "repair" and "installation" as it applies to the replacement or upgrade of a new fire alarm control panel to encourage consumers to upgrade the function and reliability of their fire alarm system, without the need to bring the entire system of components into compliance with the current code, unless specifically required by the local authority having jurisdiction; require the fire alarm servicing firm to provide the passwords for the fire alarm control panel to the property owner upon request, so that another fire alarm firm, hired by the owner to service the fire alarm system, may use the password without charging a substantial fee to re-program the entire system of devices. Additionally, the proposed amendment to the monitoring requirement in §34.616(c)(5) requires the monitoring firm to provide, on request, the call-back phone number of the firm contracted to provide the monitoring service if other than the monitoring firm. This is necessary to enable the responding fire department to obtain the phone number of the responsible party. Section 34.616(c) is also amended to

add a requirement that a monitoring firm, if terminating the monitoring service before the end of the contract date, must notify the customer at least seven days in advance to make the customer aware that the fire alarm system is not being monitored so that the customer may choose to contract the services of another firm.

The proposed amendments to §34.617 clarify that an installation certificate except for a certificate for a one-or-two-family residence shall be completed not only after the installation of a system or single station detector unit but also after an addition or modification to a fire alarm system. Additionally, the proposal requires the completion of the installation certificate in the format provided by the state fire marshal to be used in certain instances in place of any other installation certificate required in an adopted standard. Since the certificate required by the adopted standard is lengthy, the certificate of installation is deemed acceptable by the state fire marshal because it provides the minimum required information. The proposed amendments permit fire alarm firms to reproduce the forms as needed rather than requiring the State Fire Marshal's Office (SFMO) to provide the form. Additionally, the proposal requires a copy of each completed installation certificate to be kept at the firm's office accessible to the SFMO upon request. A minor change is also proposed in this section to correct a cross reference to §34.616(b)(4).

The proposed amendments to §34.619 clarify that not only is a licensed APS permitted to plan a fire alarm system, but also a licensed RAS may plan a residential fire alarm system. Additionally, the proposed amendments modify the form and content of the rubber stamp used to provide information on a plan. By marking the appropriate place on the stamped area of the plan, the planner differentiates between whether the plans are being submitted for review or as record drawings to the owner. In addition, the planner marks on the stamped portion of the plan, whether the design complies with the applicable standards and codes or if the design was copied from an engineering plan. Additionally, the proposed amendments specify the information that must be included on a fire alarm system plan for a one-or-two-family residence and require that the registered firm must retain the plans for at least one year to establish uniformity in the development of fire alarm plans for these types of occupancies and ensure that the necessary information is recorded for access by the owner or authority having jurisdiction.

Proposed §34.620 sets forth specific criteria regarding the color, content, placement, duration, use, and procedures concerning the application of installation labels and differentiates the label format between a label used for the installation of a fire alarm system in a commercial building or non-one-or-two-family residence and a label used for the installation of a fire alarm system in a one-or-two-family residence. The label for the commercial building or non-one-or-two-family residence records the name of the firm, registration number and date on which the fire alarm system was installed and the name and license number of the authorized licensee on the inside of the fire alarm control panel for the life of the system. The label for the one-or-two family residence contains the same information and also includes certification that the system or equipment complies with applicable laws and standards.

Proposed §34.621 sets forth specific criteria regarding the color, content, placement, duration, use, and procedures concerning the application of service labels. The service label is necessary to record the name, address, phone number and registration number of the firm and the name and license number of the indi-

vidual providing the service and the date and list of the services provided. When attached to the fire alarm control panel for two years, the service label provides a short historical record of the services performed for reference by other individuals inspecting the system. The service label includes a space to indicate if the service performed was general service or correction of conditions detailed on a previously attached red or yellow label.

Proposed §34.622 sets forth specific criteria regarding the color, content, placement, duration, use and procedures concerning the application of an inspection label. The proposed inspection label records the name, address, phone number and registration number of the firm, the name and license number of the inspector performing the inspection, the type and date of the inspection and the system status after the inspection or test. When attached to the fire alarm control panel and retained for five years, the inspection label provides a short historical record of the inspections performed and indicates to the authority having jurisdiction the date of the last inspection.

Proposed §34.623 sets forth specific criteria regarding the color, content, placement, duration, use and procedures concerning the application of a yellow label. The proposed yellow label records the name, address, phone number and registration number of the firm, the name and license number of the individual attaching the label and the list of conditions which result in the fire alarm system being out of compliance with applicable codes and standards. When attached to the outside of the fire alarm control panel, the yellow label provides a visual notification of the system status to the authority having jurisdiction, until the listed conditions are corrected.

Proposed §34.624 sets forth specific criteria regarding the color, content, placement, duration, use and procedures concerning the application of a red label. The proposed red label records the name, address, phone number and registration number of the firm, the name and license number of the individual attaching the label and the list of conditions which have caused the fire alarm system to be inoperable, impaired, or to have a fault condition. When attached to the outside of the fire alarm control panel, the red label provides a visual notification of the system status to the authority having jurisdiction, until the listed conditions are corrected. The label also provides space to indicate if the system is either inoperable or impaired or in a fault condition and includes brief instructions on its use.

Proposed §34.625 addresses investigations and enforcement actions for noncompliance with the rules as well as possible sanctions for such noncompliance.

Proposed §34.626 provides for the continuation of non-affected provisions of the rules if any provisions are declared invalid for any reason.

The proposed effective date for the proposed rules is March 1, 2006.

Paul Maldonado, State Fire Marshal, has determined that for each year of the first five years the proposed sections will be in effect, there will be a fiscal savings of \$2,000 per year to the department by eliminating the requirement that the State Fire Marshal's Office provide a certificate of installation form to registered firms and no fiscal impact on other state and local governments as a result of the enforcement or administration of the rules. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Mr. Maldonado has determined that for each year of the first five years the sections are in effect, the anticipated public benefit of enforcing and administering the sections will be increased safety as current day technology of fire alarm system design, performance standards and documentation regarding the installation, service and status of fire alarm systems will be used by the industry. Additionally, the requirement that at least one licensee be at each office location will ensure that the fire alarm systems are installed correctly, comply with the applicable standards, and are more reliable. The cost to provide an alarm licensee at each office location is \$170 per location, which includes the initial license fee and test fees to obtain the required license. As some firms may already have licensed individuals at each branch office location, the cost may not be applicable in all instances. The stamp that may be used to provide the required information on certain fire alarm system plans will cost approximately \$100 each. The estimated cost to replace the existing service, yellow and red labels and purchase new inspection labels is approximately \$100 to \$150 per 500 labels. The estimated cost to purchase all of the proposed updated NFPA standards is approximately \$500. However, since fire alarm firms will only need to purchase the applicable standards in their area of expertise, the cost may actually be less. The estimated cost of providing monitoring service for seven days after a monitoring firm notifies the customer that the monitoring service is being terminated before the end of the contract period is approximately \$10 - \$25 per account, which applies only to accounts that need to be discontinued before the end of the contract. The cost to a fire alarm firm in the fire alarm industry qualifying as a small business under the Government Code §2006.001 will be the same as the cost to the largest business because the cost is not dependent upon the size of the business but rather is the same cost each registered firm will incur for each fire protection alarm system sold, planned, installed, serviced, or certified. It is neither legal nor feasible to waive the proposed amendments for small or micro businesses because requirements for installation and service of fire alarm systems must be applied consistently to large, small and micro businesses in the interest of safeguarding lives and property, as required by Insurance Code Article 5.43-2.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 4, 2005 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Paul Maldonado, State Fire Marshal, Texas Department of Insurance, P.O. Box 149221, Mail Code 108-FM, Austin, Texas 78714-9221. A request for a public hearing should be submitted separately to the Office of the Chief Clerk.

The amendments are proposed pursuant to Insurance Code Article 5.43-2, §4 and §6, and §36.001. Article 5.43-2, §4 authorizes the Commissioner of Insurance to issue rules and regulations considered necessary to the Commissioner's administration of Article 5.43-2 through the State Fire Marshal and, in promulgating necessary rules and regulations, to utilize recognized standards such as, but not limited to, those of the National Fire Protection Association, the National Electrical Code, those recognized by federal law or regulation, those published by any nationally recognized standards-making organization, or any information furnished by individual manufacturers. Article 5.43-2, §6 provides that the Commissioner of Insurance may adopt rules as necessary for the administration of this article and requires the Commissioner to adopt standards applicable to any fire alarm

device, equipment, or system regulated under this article. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statutes are affected by this proposal: Insurance Code Article 5.43-2 and Government Code §417.010.

*§34.606. Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (7) (No change.)

(8) Full-time--The number of hours that represents the regular, normal, or standard amount of time per week each employee of the firm devotes to work-related activities.

(9) Full-time employment--An employee is considered to work on a full-time basis if the employee works per week at least the average number of hours worked per week by all other employees of the firm.

(10) ~~[(8)]~~ Local authority having jurisdiction--As used in the Texas Insurance Code, Article 5.43-2, §9(c), means a fire chief, fire marshal, or other designated official having statutory authority.

(11) ~~[(9)]~~ Monitoring equipment--Equipment used to transmit and receive fire alarm, trouble, and supervisory signals from protected premises to a firm registered to monitor or one exempt from licensing by the Insurance Code, Article 5.43-2.

(12) ~~[(40)]~~ NFPA--National Fire Protection Association, a nationally recognized standards-making organization.

(13) ~~[(44)]~~ NICET--National Institute for Certification in Engineering Technologies.

(14) ~~[(42)]~~ Outsource testing service--The testing service selected by the state fire marshal to administer certain designated qualifying tests for licenses under this subchapter.

(15) ~~[(43)]~~ Plan--To lay out, detail, draw, calculate, devise, or arrange an assembly of fire alarm or detection devices, equipment, and appurtenances, including monitoring equipment, in accordance with standards adopted in this subchapter.

(16) ~~[(44)]~~ Primary registered firm--The registered fire alarm company with the responsibility for the fire alarm system certification.

(17) ~~[(45)]~~ Repair--To restore to proper operating condition.

(18) ~~[(46)]~~ Test--The act of subjecting a fire detection or alarm device or system, including monitoring equipment, to any procedure required by applicable standards or manufacturers' recommendations to determine whether it is properly installed or operates correctly.

*§34.607. Adopted Standards.*

(a) The commissioner adopts by reference those sections of the following copyrighted minimum standards, recommendations, and appendices concerning fire alarm, fire detection, or supervisory services or systems, except to the extent they are at variance to sections of this chapter, the Texas Insurance Code, Article 5.43-2, or other state statutes. The standards are published by and are available from the National Fire Protection Association, Quincy, Massachusetts. A copy of the standards shall be kept available for public inspection at the state fire marshal's office.

(1) NFPA 11-2002 [4998], Standard for Low-Expansion Foam.

(2) NFPA 11A-1999 [4994], Standard for Medium-and High-Expansion Foam Systems.

(3) NFPA 12-2000 [4998], Standard on Carbon Dioxide Extinguishing Systems.

(4) NFPA 12A-2004 [4997], Standard on Halon 1301 Fire Extinguishing Systems.

(5) NFPA 13-2002 [4996], Standard for the Installation of Sprinkler Systems.

(6) NFPA 13D-2002 [4996], Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes.

(7) NFPA 13R-2002 [4996], Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height.

(8) NFPA 15-2001 [4996], Standard for Water Spray Fixed Systems for Fire Protection.

(9) NFPA 16-2003 [4995], Standard for the Installation of ~~[Deluge]~~ Foam-Water Sprinkler and Foam Water Spray Systems.

(10) NFPA 17-2002 [4998], Standard for Dry Chemical Extinguishing Systems.

(11) NFPA 17A-2002 [4998], Standard for Wet Chemical Extinguishing Systems.

(12) NFPA 25-2002 [4998], Standard for the Inspection, Testing and Maintenance of Water-Based Fire Protection Systems.

(13) NFPA 70-2005 [4999], National Electrical Code.

(14) NFPA 72-2002 [4996], National Fire Alarm Code.

(15) NFPA 90A-2002 [4996], Standard for the Installation of Air Conditioning and Ventilating Systems.

(16) NFPA 101®-2003 [2000], or ~~[and]~~ later editions, Code for Safety to Life from Fire in Buildings and Structures (Life Safety Code)®, or a local jurisdiction may adopt one set of the model codes listed in subsection (b) of this section in lieu of NFPA 101.

(17) UL 827 October 1, 1996, Standard for Central Station Alarm Services.

(18) NFPA 2001-2004, Standard on Clean Agent Fire Extinguisher Systems.

(b) The acceptable alternative model code sets are:

(1) - (3) (No change.)

(4) the International Building Code®-2003 or [2000 and] later editions, and the International Fire Code-2003 [2000] or ~~[and]~~ later editions; or

(5) the International Residential Code® for One- and Two-Family Dwellings-2003 or [2000 and] later editions; or

(6) NFPA 5000™, Building Construction and Safety Code™-2003 or ~~[and]~~ later editions, and NFPA 1 Uniform Fire Code™ 2003 ~~[Fire Prevention Code-2000]~~ or ~~[and]~~ later editions.

*§34.610. Certificate of Registration.*

(a) - (g) (No change.)

~~[(h) Monitoring requirements.]~~

~~[(1) A registered firm may not monitor a fire alarm system located in the State of Texas for an unregistered firm.]~~

~~[(2) A registered firm may not connect a fire alarm system to a monitoring service unless the monitoring service is registered under or is exempt from the licensing requirements of the Insurance Code, Article 5.43-2, so long as the monitoring equipment being used is in compliance with Article 5.43-2, §9.]~~

~~[(3) A registered firm must employ at least one technician licensee at each central station location. Each dispatcher at the central station is not required to be a fire alarm technician licensee.]~~

~~[(4) A registered firm subcontracting monitoring services to another registered firm must advise the monitoring services subscriber of the identity and location of the registered firm actually providing such services unless the registered firm's contract with the subscriber contains a clause giving the registered firm the right, at the registered firm's sole discretion, to subcontract any or all of the work or service.]~~

~~[(5) A registered firm reporting alarm or supervisory signals to emergency services shall provide their licensed company name and the following information: type of alarm; address of alarm; name of subscriber; dispatcher's identification; and call back phone number.]~~

#### *§34.613. Applications.*

(a) Certificates of registration.

(1) - (3) (No change.)

(4) A registered firm must employ at least one full-time licensed individual at each location of a main or branch office.

(5) [(4)] Insurance required.

(A) The state fire marshal will not issue a certificate of registration under these sections unless the applicant files with the State Fire Marshal's office evidence of an acceptable general liability insurance policy.

(B) Each registered firm must maintain in force and on file in the State Fire Marshal's office a certificate of insurance identifying the insured and the exact nature of the business insured. In identifying the named insured, the certificate of insurance must include either an assumed name or the name of the corporation, partners, if any, or sole proprietor, if applicable.

(6) A firm billing a customer for monitoring is engaged in the business of monitoring and must comply with the insurance requirements of this subchapter for a monitoring firm.

(7) [(5)] Applicants for a certificate of registration who engage in monitoring must provide the specific business location(s) where monitoring will take place and the name and license number of the fire alarm licensee(s) at each business location. In addition, the applicants must provide evidence of listing or certification as a central station by a testing laboratory approved by the commissioner and a statement that the monitoring service is in compliance with adopted NFPA 72.

(8) [(6)] Applicants for a certificate of registration - single station must provide a statement, signed by the sole proprietor, a partner of a partnership, or by an officer of the corporation, indicating that the firm exclusively engages in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining single station devices.

(b) (No change.)

(c) Renewal applications.

(1) (No change.)

(2) A licensee with an unexpired license who is not employed by a registered firm at the time of the licensee's renewal may renew that license; however, the licensee may not engage in any activity for which the license was granted until the licensee is employed and qualified by a registered firm. [A license may not be renewed if the applicant is not currently an employee or an agent of a registered firm.]

(d) (No change.)

#### *§34.615. Test.*

(a) - (d) (No change.)

(e) An applicant for a license must complete and submit all application requirements within one year of the successful completion of any test required for a license; otherwise, the test is voided and the individual will have to pass the test again.

#### *§34.616. Sales, Installation, and Service.*

(a) (No change.)

(b) Fire detection and fire alarm devices or systems other than residential single station.

[(1) The sale or lease of fire alarm systems must be performed under the direct supervision of a licensed residential fire alarm superintendent or fire alarm planning superintendent, as applicable to the license.]

(1) [(2)] The installation of all fire detection and fire alarm devices or systems, including monitoring equipment, subject to the Insurance Code, Article 5.43-2 must be performed by or under the direct supervision of a licensed fire alarm technician, residential fire alarm superintendent, or a fire alarm planning superintendent. The certifying licensee must be licensed under the ACR number of the primary registered firm and must be present for the final acceptance test prior to certification.

(2) [(3)] The maintenance or servicing of all fire detection and fire alarm devices or systems must be performed by or under the direct on-site supervision of a licensed fire alarm technician, residential fire alarm superintendent or a fire alarm planning superintendent.

(3) [(4)] If the installation or servicing of a fire alarm system also includes installation or servicing of any part of a fire protection sprinkler system and/or a fire extinguisher system other than inspection and testing of detection or supervisory devices, the licensing requirements of the appropriate Insurance Code, Article 5.43-1 or 5.43-3, must be satisfied.

(4) [(5)] Installation of fire detection or fire alarm devices or systems, including monitoring equipment, must be in accordance with standards adopted in §34.607 of this title (relating to Adopted Standards) except when the installation complies with a more recent edition of an adopted standard or a Tentative Interim Amendment published as effective by the NFPA.

(5) Fire alarm system equipment replaced in the same location with the same or similar electrical and functional characteristics and listed to be compatible with the existing equipment, as determined by a fire alarm planning superintendent, may be considered repair. The equipment replaced shall comply with the current adopted standards but the entire system is not automatically required to be modified to meet the applicable adopted code. The local authority having jurisdiction shall be consulted to determine whether to update the entire system to comply with the current code and if plans or a permit is required prior to making the repair.

(6) Upon request of the owner of the fire alarm system, a registered firm must provide all passwords, including those for the site

specific software, but the registered firm may refrain from providing that information until the system owner signs a liability waiver provided by the registered firm.

(c) Monitoring requirements.

(1) A registered firm may not monitor a fire alarm system located in the State of Texas for an unregistered firm.

(2) A registered firm may not connect a fire alarm system to a monitoring service unless the monitoring service is registered under or is exempt from the licensing requirements of Insurance Code Article 5.43-2, so long as the monitoring equipment being used is in compliance with Article 5.43-2, §9.

(3) A registered firm must employ at least one technician licensee at each central station location. Each dispatcher at the central station is not required to be a fire alarm technician licensee.

(4) A registered firm subcontracting monitoring services to another registered firm must advise the monitoring services subscriber of the identity and location of the registered firm actually providing such services unless the registered firm's contract with the subscriber contains a clause giving the registered firm the right, at the registered firm's sole discretion, to subcontract any or all of the work or service.

(5) A registered monitoring firm, reporting an alarm or supervisory signal to a municipal or county emergency services center, shall provide, at a minimum, the type of alarm, address of alarm, name of subscriber, dispatcher's identification and call-back phone number. If requested, the firm shall also provide the name, registration number, and call-back phone number of the firm contracted with the subscriber to provide monitoring service if other than the monitoring station.

(6) If the monitoring service provided under this subchapter is discontinued before the end of the contract with the subscriber, the monitoring firm, central station, and/or service provider shall notify the owner or owner's representative of the monitored property and the local authority having jurisdiction, a minimum of seven days before terminating the monitoring service. If the monitored property is a one-or two-family-dwelling, notification of the local authority having jurisdiction is not required.

§34.617. Certification.

After completion of the installation, modification, or addition of a system or single station detector unit, except for a one-or-two-family residence, the licensee shall complete [and present] an installation certificate in the format provided by the state fire marshal in lieu of the installation form required by the adopted standard unless required otherwise by the local authority having jurisdiction. The format for the installation certificate shall be provided by the SFMO on request. The certificate shall be presented to the owner or the owner's [his] representative or posted [post the certificate] near the main control panel. The installation certificate shall identify the standards applicable to the installation and certify compliance with such standards, unless variance is permitted in §34.616(b)(4) [§34.616(b)(5)] of this title (relating to Sales, Installation, and Service), in which event the specific variance and authority for such variance shall be identified. The information and format of the installation certificate [form] shall be determined [furnished] by the state fire marshal. When an installation certificate form has been completed, legible copies shall be distributed as follows:

(1) original at the site of installation after completion of the installation;

(2) one copy retained for the life of the system by the certifying company for access by the State Fire Marshal's Office; and

(3) one copy to be sent within 10 days after completion of installation to the local authority having jurisdiction.]; and]

[(4) one copy to be sent within 10 days after completion of installation to the state fire marshal's office, Austin.]

§34.619. Fire Alarm and Detection System Plans and Record Drawings.

(a) Each fire alarm system or modification to an existing system must be planned by a person holding a fire alarm planning superintendent license or a residential fire alarm superintendent license, as applicable, or a Texas registered professional engineer.

(b) Except for plans sealed by a Texas registered engineer or where specifically waived by the local authority having jurisdiction, at least one set of plans submitted for review, rating, permit, or record purposes must be dated and signed with an original signature by the applicable licensed planner, certifying that the plans meet the applicable codes and standards or were copied from sealed engineering plans with any violations of the applicable codes and standards noted. In addition, the plans must contain the license number of the licensee, the name, address, phone number, and the certificate of registration number of the registered firm. This information may be in the form of a stamp as shown in subsection (d) of this section.

(c) [(b)] Record drawings [Plans] showing details, in accordance with applicable codes and standards, including the sequence of operation, [of system wiring, control panel terminal identification, and device location, with functional information and instructions on system operation.] must be provided to the building owner or his representative and shall comply with the requirements of subsection (b) of this section. Subsequent modifications, additions, or alterations must be legibly noted on the record drawings [updated plans] and provided to the owner or his representative.

(d) [(e)] Plan review and record drawings stamp: [At least one plan copy must bear the name, original signature, business phone number, and license number of the licensed fire alarm planning superintendent or a Texas registered professional engineer, the completion date, name, address, and certificate number of the registered firm.]  
Figure: 28 TAC §34.619(d)

[(d) A rubber stamp may be used by a licensed fire alarm planning superintendent to supply the information required by subsection (e) of this section, except that a stamped signature is prohibited. If a rubber stamp is used, it must produce an imprint at least two inches wide by one inch high, all in bold type and capital letters, and in the following format:]  
Figure: 28 TAC §34.619(d)

(e) Fire alarm plans, manuals, and documents shall not be stored inside fire alarm panels.

(f) Scale or non-scale drawings for one-or-two-family residences, showing locations of fire detection devices, fire alarm notification devices and the fire alarm system control panel shall be maintained by the installing registered firm for a period of not less than one year after completion of the installation, and shall contain the registered firm's name, phone number, date the installation was completed, certificate of registration number, name and signature of the licensed fire alarm planning superintendent, residential fire alarm superintendent or Texas registered professional engineer. Electronically archived drawings that are reproducible are acceptable. Drawings shall be made available to the residential property owner and local authority having jurisdiction upon request.

§34.620. Installation Labels.

(a) After the completion of an installation of new fire alarm equipment or a new system, or the extension, alteration or modification to a fire alarm system already in place, an installation label must be affixed to the inside of the control panel cover, or, if the system has

no panel, in a permanent location. Yellow or red labels shall not be attached for the installation of a new system or new equipment used in the extension, alteration or modification to an existing fire alarm system. Attachment of the installation label for a one-or-two-family residence certifies that the fire alarm equipment or system has been tested and complies with the requirements of the Insurance Code Article 5.43-2, this subchapter, the adopted codes and standards, and the manufacturer's requirements.

(b) Installation labels must be white with black lettering.

(c) Installation labels must be approximately three inches in height and approximately three inches in width and must have an adhesive on the back.

(d) Installation labels for commercial building or non-one-or-two-family residence shall contain the following information in the format of the label as indicated in subsection (e) of this section:

(1) **DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL** (all capital letters in at least 10-point bold face type);

(2) **INSTALLATION RECORD** (all capital letters in at least 10-point bold face type);

(3) the registered firm's name, address, telephone number and certificate of registration number (either main office or branch office) of the firm performing the installation;

(4) the installation date, the licensee's signature (a stamped signature is prohibited) and license number; and

(5) the name of the fire alarm planning superintendent and license number or professional engineer's name and license number who planned the system.

(e) Commercial building or non-one-or-two-family residence installation label:

Figure: 28 TAC §34.620(e)

(f) Installation labels for one-or-two-family residence must contain the following information in the format of the label as set forth in subsection (g) of this section:

(1) **DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL** (all capital letters in at least 10-point bold face type);

(2) **INSTALLATION RECORD** (all capital letters in at least 10-point bold face type);

(3) the registered firm's name, address, telephone number and certificate of registration number (either main office or branch office) of the firm performing the installation;

(4) the installation date, the licensee's signature (a stamped signature is prohibited) and license number; and

(5) the inscription "I hereby certify, on behalf of the registered firm, that the fire alarm equipment or system has been tested and complies with the requirements of the Insurance Code Article 5.43-2, the Fire Alarm Rules, the adopted codes and standards, and the manufacturer's requirements."

(g) One-or-two-family residence installation label:

Figure: 28 TAC §34.620(g)

#### §34.621. Service Labels.

(a) After any service, a fire alarm service label must be completed in detail and affixed to the inside or outside of the control panel cover or, if the system has no panel, in a permanent location. The signature of the licensee on the service label certifies that the service performed complies with requirements of law.

(b) If the service performed corrects all conditions noted on a yellow label or red label, the color and date of the label shall be marked on the service label and the respective yellow or red label removed.

(c) If during any service it is observed that the system does not comply with applicable standards adopted at the time the system was installed, has a fault condition, or is impaired from normal operation, the owner or the owner's representative and the local authority having jurisdiction must be notified of the condition and the licensee must attach, in addition to the service label, the appropriate yellow or red label, following the procedures in this section.

(d) Service labels shall remain in place for at least two years, after which time they may be removed by a licensed employee or agent of a registered firm. An employee of the State Fire Marshal's Office or an authorized representative of a governmental agency with appropriate regulatory authority may remove excess labels at any time.

(e) The service label must be white in color with printed black lettering.

(f) The service label must be approximately three inches in height and three inches in width and must have an adhesive on the back that allows for label removal.

(g) Approximately 1/2 inch of the adhesive on the top back of the label should be used to attach the label over the previous service label to permit viewing of the previous label and the maintaining of a brief history.

(h) Service labels must contain the following information in the format of the service label as set forth in subsection (i) of this section:

(1) **DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL** (all capital letters in at least 10-point bold face type);

(2) **SERVICE RECORD** (all capital letters in at least 10-point bold face type);

(3) the registered firm's name, address, telephone number (either main office or branch office) and certificate of registration number of the firm performing the service;

(4) the date of service performed, the licensee's signature (a stamped signature is prohibited) and license number;

(5) a list of services performed; and

(6) the type of service performed, either general service or the correction of conditions that resulted in a red label or yellow label.

(i) Service label:

Figure: 28 TAC §34.621(i)

#### §34.622. Inspection/test Labels.

(a) After the inspection and testing of a fire alarm system, a fire alarm inspection/test label must be completed in detail and affixed to either the inside or outside of the control panel cover or, if the system has no panel, in a permanent location. The signature of the licensee on the inspection/test label certifies that the inspection and tests performed complies with requirements of the adopted standards.

(b) If any service or maintenance is performed pursuant to the inspection or test, a service label, in addition to the inspection/test label, shall be completed and attached according to the procedures in this section.

(c) If during any inspection or test it is observed that the system does not comply with applicable standards adopted at the time the system was installed, has a fault condition, or is impaired from normal operation, the owner or the owner's representative and the local author-

ity having jurisdiction must be notified of the condition and the licensee must attach, in addition to the inspection/test label, the appropriate yellow or red label, in accordance with the procedures in this section.

(d) Inspection/test labels shall remain in place for at least five years, after which time they may be removed by a licensed employee or agent of a registered firm. An employee of the State Fire Marshal's Office or an authorized representative of a governmental agency with appropriate regulatory authority may remove excess labels at any time.

(e) The inspection/test label must be blue in color with printed black lettering.

(f) The inspection/test label must be approximately three inches in height and three inches in width and must have an adhesive on the back that allows for label removal.

(g) Approximately 1/2 inch of the adhesive on the top back of the label should be used to attach the label over the previous inspection/test label to permit viewing of the previous label and the maintaining of a brief history.

(h) Inspection/test labels must contain the following information in the format of the inspection/test label as set forth in subsection (i) of this section:

(1) DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL (all capital letters in at least 10-point bold face type);

(2) INSPECTION/TEST RECORD (all capital letters in at least 10-point bold face type);

(3) the registered firm's name, address, telephone number (either main office or branch office) and certificate of registration number of the firm performing the inspection/test;

(4) the date of the inspection performed, the licensee's signature (a stamped signature is prohibited) and license number;

(5) the type of inspection/test performed to be marked, new installation, semi-annual, quarterly or annual;

(6) the last date of sensitivity test, if known; and

(7) the status after the inspection/test of acceptable or yellow label attached, or red label attached.

(i) Inspection/test label:  
Figure: 28 TAC §34.622(i)

#### §34.623. Yellow Labels.

(a) If, after any service, inspection or test, a system does not comply with applicable codes and standards adopted at the time the system was installed, a completed yellow label must be attached to the outside of the control panel cover or, if the system has no panel, in a permanent location to indicate that corrective action is necessary.

(b) The signature of the licensee on a yellow label certifies that the conditions listed on the label cause the system to be out of compliance with applicable codes and standards.

(c) After attaching a yellow label, the licensee or the registered firm must notify the property owner, occupant or their representative and the local authority having jurisdiction in writing indicating the conditions with which the system does not comply with the applicable codes and standards. The notification must be postmarked, e-mailed, faxed or hand delivered within five business days of the attachment of the yellow label.

(d) Yellow labels shall remain in place until the conditions are corrected and a service label is attached certifying that the corrections were made. The yellow label may be removed by a licensed employee or agent of a registered firm, an employee of the State Fire Marshal's

Office or an authorized representative of a governmental agency with appropriate regulatory authority.

(e) Yellow labels must be approximately three inches in height and three inches in width and must have an adhesive on the back that allows for label removal.

(f) Labels must be yellow in color with printed black lettering.

(g) Yellow labels must bear the following information in the format of the label as set forth in subsection (h) of this section:

(1) DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL (all capital letters in at least 10-point bold face type);

(2) SYSTEM DOES NOT COMPLY WITH APPLICABLE CODES & STANDARDS (all capital letters in at least 10-point bold face type);

(3) the registered firm's name, address, telephone number (either main office or branch office) and certificate of registration number of the firm attaching the yellow label;

(4) the date the label was attached, the licensee's signature (a stamped signature is prohibited) and license number; and

(5) a list of conditions resulting in the yellow label;

(h) Yellow label:  
Figure: 28 TAC §34.623(h)

#### §34.624. Red Labels.

(a) If, after any service, inspection or test, a system or any part thereof is inoperable, has a fault condition, or is impaired from normal operation, excluding the area(s) of a building under construction, a completed red label must be attached to the outside of the control panel cover or, if the system has no panel, in a permanent location, to indicate that corrective action is necessary.

(b) The signature of the licensee on a red label certifies that the conditions listed on the label have caused the system to be inoperable, have a fault condition, or be impaired from normal operation.

(c) If the system is inoperable, immediately after attaching a red label, the licensee or the registered firm must orally notify the property owner, occupant or their representative and the local authority having jurisdiction where available, of all impairments and provide a written notification, e-mailed, faxed or hand delivered within the next business day of the attachment of the red label. If the system has a fault condition or is impaired from normal operation, after attaching a red label, the licensee or the registered firm must notify the property owner, occupant or their representative and the local authority having jurisdiction in writing indicating the condition(s). The written notification must be postmarked, e-mailed, faxed or hand delivered within three business days of the attachment of the red label.

(d) Red labels shall remain in place until the conditions are corrected and a service label is attached certifying that the corrections were made. The red label may be removed by a licensed employee or agent of a registered firm, an employee of the State Fire Marshal's Office or an authorized representative of a governmental agency with appropriate regulatory authority.

(e) Red labels must be approximately three inches in height and three inches in width and must have an adhesive on the back that allows for label removal.

(f) Labels must be red in color with printed black lettering.

(g) Red labels must bear the following information in the format of the label as shown in subsection (h) of this section:



(1) DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL" (all in capital letters, at least 10-point bold face type);

(2) status of the system to be marked, inoperable or impaired or fault;

(3) the registered firm's name, address, telephone number (either main office or branch office) and certificate of registration number of the firm attaching the red label;

(4) the date the label was attached, the licensee's signature (a stamped signature is prohibited) and license number; and

(5) a list of conditions resulting in the red label;

(h) Red label:

Figure: 28 TAC §34.624(h)

§34.625. Enforcement.

(a) The state fire marshal, or the state fire marshal's representative, may conduct investigations of registered firms to determine compliance with Insurance Code Article 5.43-2 and this subchapter. An investigation may be initiated on the written complaint of any party or by the department on its own motion.

(b) When an investigation reveals noncompliance, the firm and any licensee responsible for the work shall be notified in writing of the noncompliance upon completion of the investigation report.

(c) The failure to comply with the provisions of this subchapter and the provisions of Insurance Code Article 5.43-2 by certificate holders or licensees may subject them, as provided in Government Code §417.010, to administrative action including, but not limited to, suspension, revocation, or refusal to issue or renew a license or a certificate of registration or issuance of a cease and desist order and/or administrative penalty and/or order for restitution to persons harmed.

§34.626. Severability.

If any provision of this subchapter or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of this subchapter which can be given effect without the invalid provisions or application. To this end, all provisions of this subchapter are declared to be severable.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 24, 2005.

TRD-200504800

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: December 4, 2005

For further information, please call: (512) 463-6327



**28 TAC §§34.620 - 34.624**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Insurance or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Department of Insurance proposes the repeal of §§34.620 - 34.624, concerning fire alarm rules. The repeal is

necessary to allow for the proposal of new rules that reorganize and renumber the sections and provide for the addition of new rules. Notice of proposal of new §§34.620 - 34.626 appears elsewhere in this issue of the Texas Register.

Paul Maldonado, State Fire Marshal, has determined that during the first five years that the proposed repeal is in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the sections. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Mr. Maldonado has also determined that for each year of the first five years the repeal of the sections is in effect, the public benefit anticipated as a result of the administration and enforcement of the repealed sections will be the reorganization of these sections which will result in added safety through the increased efficiency of the registered firms who install and service fire alarm systems and in making it easier for fire alarm firms and local fire officials to locate the necessary requirements for compliance with fire alarm installation and servicing regulations as well as to more accurately document the performance and status of fire alarm systems. There is no anticipated economic cost to persons who are required to comply with the proposed repeal. There is no anticipated difference in cost of compliance between small and large businesses.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 4, 2005 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-1C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Paul Maldonado, State Fire Marshal, Texas Department of Insurance, P.O. Box 149221, Mail Code 108-FM, Austin, Texas 78714-9221. A request for a public hearing must be submitted separately to the Office of Chief Clerk.

Repeal of the sections is proposed pursuant to Insurance Code Article 5.43-2, §6 and §36.001. Article 5.43-2, §6 provides that the Commissioner of Insurance may adopt rules necessary for the administration of this article. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The proposed repeal affects the following statutes: Insurance Code Article 5.43-2 and Government Code §417.010.

§34.620. Installation and Service Labels.

§34.621. Yellow Labels.

§34.622. Red Labels.

§34.623. Enforcement.

§34.624. Severability.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 24, 2005.

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Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: December 4, 2005

For further information, please call: (512) 463-6327

## SUBCHAPTER G. FIRE SPRINKLER RULES

### 28 TAC §§34.706, 34.707, 34.710, 34.711, 34.713, 34.714, 34.716 - 34.725

The Texas Department of Insurance proposes amendments to §34.706, §34.707, §34.710, §34.711, §34.713, §34.714, §34.716, §34.717, and new §§34.718 - 34.725 concerning fire protection sprinkler rules. Insurance Code Article 5.43-3, §7 gives the Commissioner of Insurance the authority to delegate the exercise of all or part of the Commissioner's functions, powers and duties under this article to the State Fire Marshal. Insurance Code Article 5.43-3, §6 provides for the creation of the Fire Protection Advisory Council to advise and recommend rule changes. The members of the council assisted in the review and formulation of the proposed rules and recommended changes in the rules. The proposed sections are necessary to implement the recommendations of the council and to update regulations regarding planning, installation, inspecting and servicing of fire protection sprinkler systems. To ensure and maintain orderly format of the fire protection sprinkler rules, the proposed sections reorganize the general subject matter with the proposal of new installation tags and new inspection, testing and maintenance service (ITM) tags. The proposed sections make it easier for fire protection sprinkler contractors and fire officials to quickly locate the requirements as well as for fire officials to accurately enforce the sections. This proposal is simultaneous with the proposed repeal of §§34.718 - 34.723 which appears elsewhere in this issue of the Texas Register.

The proposed amendments to §34.706 add definitions for terms which are consistent with those in the nationally recognized standards. The new definitions will assist in determining the appropriate tag (installation, service, ITM, yellow, or red tag) to be used when servicing fire sprinkler systems.

The proposed amendments to §34.707 adopt by reference certain standards and recommended practices of the National Fire Protection Association (NFPA). The proposed amendments replace the currently adopted (national) standards with the most recent editions of those standards which are published by the National Fire Protection Association every three years. Additionally, other units of government in Texas are adopting these same standards, and uniformity of standards enables the fire sprinkler industry, the local fire officials and the public to be more familiar with the content of the standards and enables local fire officials to consistently enforce the requirements that are applicable in their jurisdiction. Four of the standards, NFPA 231, NFPA 231C, NFPA 231D and NFPA 231F are proposed to be deleted and incorporated into the NFPA 13 standard. The proposed amendments to the existing standards maintain the minimum requirements for the design, installation and performance of current day technology for fire sprinkler systems. The changes in the standards are proposed to clarify existing requirements, mandate existing current installation practices, encourage competent system design, adapt existing requirements to current state-of-the-art equipment, and add installation requirements to provide a greater level of safety to the public who rely on the performance of these fire protection sprinkler systems. The proposal also restructures the rules for ease in use and eliminates redundant language.

The proposed amendments to §34.710 delete the requirement to surrender a void certificate of registration after an administrative revision and prior to issuance of a new registration because it

is unnecessary and burdensome on the registration holder. The amendments also clarify that the holder of a Certificate of Registration for Underground Fire Mains is not permitted to plan the underground fire protection sprinkler system piping.

The proposed amendments to §34.711 establish an additional RME-General Inspector license. This license will allow the State Fire Marshal's Office (SFMO) to verify that individuals who inspect fire protection sprinkler systems have achieved a certain minimum level of technical competence to ensure the property owner and public can rely on the proper operation of the sprinkler system in an emergency situation.

The proposed amendments to §34.713 delete outdated and extraneous language concerning the identification of the insured on the required certificate of insurance by rewording subsection (a)(7)(D),(E) and (F) and combining them into subsection (a)(7)(B). The proposed amendments also delete the requirement to submit evidence of successful completion of a course approved by the SFMO on the planning, inspection and installation of an NFPA 13D dwelling fire protection sprinkler system for those applying for an RME-Dwelling license. Because this course is not regularly offered, the requirement prevents individuals from obtaining the license in a timely manner. Further, the proposed amendments set forth the minimum technical testing requirements necessary to be completed by the RME-Dwelling license applicant prior to obtaining the proposed RME-General Inspector license.

The proposed amendments to §34.714 set forth the fees for the proposed RME-General Inspector license. Additionally, the proposal corrects the error in the amount of the specified renewal late fee for a non-specialized sprinkler certificate of registration, which expired longer than 90 days but less than two years, to comply with the requirements in Insurance Code Article 5.43-3, §5A.

The proposed amendments to §34.716 add the requirement that the registered installing firm retain a copy of the Contractor's Material and Test Certificate at its place of business for the life of the sprinkler system and make the certificate accessible to a representative of the SFMO upon request. The proposed amendments also require that after July 1, 2008, the inspection and testing of all fire sprinkler systems, except one- and two-family dwelling or underground systems, must be done by an individual holding the proposed RME-General Inspector license or the existing RME-General license. The proposed amendments also clarify the intent of the subchapter by providing that the planning, installation or servicing of all fire sprinkler systems must comply with the standards in §34.707 or a more recent edition of the standard that is adopted by the political subdivision where the fire sprinkler system is to be installed. This will provide direction to the registered sprinkler firm and will avoid conflicts that arise due to differences in the various editions of the adopted code. Additionally, the proposed amendments require that each registered firm must employ at least one full-time RME-General or RME-Dwelling licensee at each business office where fire protection sprinkler system planning is performed, who is appropriately licensed to conduct the business performed therein, and that the RME directly supervise the design and layout of the automatic fire sprinkler system.

The proposed amendments to §34.717 require that an RME sign with an original signature and certify using the proposed stamp that is displayed in subsection (d) of this section at least one set of plans submitted to the authority having jurisdiction for review, rating, permit, or record purposes and at least one set of as-built

plans provided to the building owner. This proposed requirement is to address local fire marshals' concerns that the plans submitted to their offices for review comply with the adopted standards. Since the RME is the only technically qualified individual licensed through the SFMO, requiring the RME to sign the submitted plans will permit the RME to review the plans before submission to the local fire marshal.

Proposed §34.718 sets forth specific criteria regarding the color, content, placement, duration, use and procedures for the application of an installation tag. This proposed tag records the name of the firm, registration number and date on which the fire protection sprinkler system was installed. The proposed tag will also contain, for the life of the system, critical information concerning the pressure and flow characteristics of the water supply at the time the system was installed. Subsequent measurements of the water supply pressure and flow characteristics that are taken during a test will be able to be compared to the characteristics indicated on the installation tag to determine if the water supply pressure has degraded below the minimum levels anticipated at the time the system was installed.

Proposed §34.719 sets forth specific criteria regarding the color, content, placement, duration, use and procedures for the application of a service tag. The proposed service tag when completed will indicate the name, address, phone number and registration number of the servicing firm; the applicable RME's name and license number; the signature of the service person; the type of work (service, remodel, or other); the list of services performed; and the date any yellow tag or red tag conditions were corrected.

Proposed §34.720 sets forth specific criteria regarding the color, content, placement, duration, use and procedures for the application of an ITM tag. The proposed ITM tag records the name, address, phone number and registration number of the firm; the name and license number of the inspector performing the ITM; the type and date of the ITM performed; the system status after the ITM; and the water supply pressure and flow characteristics determined by the main drain test.

Proposed §34.721 sets forth specific criteria regarding the color, content, placement, duration, use and procedures for the application of a yellow tag. The proposed yellow tag records the name, address, phone number and registration number of the firm; the name and license number of the Responsible Managing Employee completing the information on the tag; and the list of impairments that are not compliant with NFPA standards.

Proposed §34.722 sets forth specific criteria regarding the color, content, placement, duration, use and procedures for the application of a red tag. The proposed red tag records the name, address, phone number and registration number of the firm; the name and license number of the respective Responsible Managing Employee completing the information on the tag; and the emergency impairments. The red tag when attached to the specific sprinkler riser and retained until the impairments are corrected will provide a visual notification of the status of the system.

Proposed §§34.723 - 34.725, which concern enforcement, administrative actions and severability, are substantively the same as and replace repealed §§34.721 - 34.723.

The proposed effective date for the proposed rules is March 1, 2006.

Paul Maldonado, State Fire Marshal, has determined that for each year of the first five years the proposal will be in effect, there will be no fiscal implications for state or local government resulting from the enforcement or administration of the proposed sections. Mr. Maldonado has also determined that there will be no adverse effect on local employment or the local economy resulting from the proposal.

Mr. Maldonado also has determined that for each year of the first five years the proposed sections are in effect, the anticipated public benefit of enforcing and administering the sections will be increased safety and reliability that the fire sprinkler system will effectively operate every time it is needed under emergency situations, since the latest technology of sprinkler system design, installation and inspection standards will be used by the industry. Additionally, the requirement of direct supervision of the design or layout of a fire sprinkler system by an RME as well as the requirement of the RME to certify that the systems meet applicable standards by signing one set of plans submitted to an authority having jurisdiction will provide assurance of accurate compliance with the state and local adopted standards. The estimated cost to employ or have an existing employee licensed as a full-time RME at each branch office where sprinkler systems are designed is \$500. The stamp used to record information on each plan specified in the rule will cost approximately \$30. The addition of an RME-General Inspector license will provide increased safety and assurance that trained experienced individuals inspect the systems. The estimated initial cost for the RME-General Inspector license is \$300. These estimates include the initial license fees and test fees for the tests administered by the SFMO, which are currently the only tests available. The estimated cost to purchase all of the proposed updated NFPA standards is approximately \$500, but some sprinkler firms in the industry will only need to purchase the applicable standards in their area of expertise, so the cost may actually be less. The cost to purchase new or replacement installation, service, inspection, yellow or red tags is approximately \$100 to \$150 for 500 tags. The cost to a fire sprinkler firm in the fire sprinkler industry qualifying as a small business under the Government Code §2006.001 will be the same as the cost to the largest business because the cost is not dependent upon the size of the business but rather is the same cost registered firms incur for each fire protection sprinkler system they sell, plan, install, service or certify. It is neither legal nor feasible to waive the proposed amendments for small or micro businesses because requirements for installation and service of fire extinguisher systems must be applied consistently to large, small and micro businesses for the protection and preservation of life and property as required by Insurance Code Article 5.43-3.

To be considered, written comments on the proposal must be submitted no later than December 4, 2005 to Gene C. Jarmon, General Counsel and Chief Clerk, Texas Department of Insurance, P.O. Box 149104, Mail Code 113-2A, Austin, Texas 78714-9104. An additional copy of the comments must be submitted simultaneously to Paul Maldonado, State Fire Marshal, Texas Department of Insurance, P.O. Box 149221, Mail Code 108-FM, Austin, Texas 78714-9221. Requests for a public hearing should be submitted separately to the Office of the Chief Clerk.

The amended and new sections are proposed pursuant to Insurance Code Article 5.43-3 and §36.001. Insurance Code Article 5.43-3, §3 and §7 provide that the Commissioner of Insurance may adopt rules necessary for the administration of this article, and §4 authorizes the Commissioner to prescribe applicable fees. Article 5.43-3, §3(a) provides that the rules may cre-

ate a specialized licensing or registration program for fire protection sprinkler system contractors. Article 5.43-3, §3(b) provides that the Commissioner in adopting necessary rules may utilize recognized standards such as those adopted by a federal law or regulation or those published by nationally recognized standards-making organizations, or those developed by individual manufacturers. Article 5.43-3, §7(a)(1) provides that the rules address the registration of a person or organization engaged in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems, and §7(a)(2) provides that the rules address the requirements for the plan, sale, installation, maintenance, or servicing of fire protection sprinkler systems. Article 5.43-3, §4(i) authorizes the Commissioner to prescribe fees for registration and licensing that are within the limits specified in §4. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statutes are affected by the proposed sections: Insurance Code Article 5.43-3 and Government Code §417.010.

§34.706. *Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Business--Planning, selling, installing, maintaining, or servicing fire protection sprinkler systems.

(2) Certificate--The certificate of registration issued by the state fire marshal.

(3) Certify--To attest to the proper planning, installing, maintaining, or servicing of fire protection sprinkler systems by executing a contractor's material and test certificate or other form required by a governmental authority or by attaching a completed service tag.

(4) [~~Commission--The Texas Commission on Fire Protection.~~]

[(5)] Department--The Texas Department of Insurance.

(5) Emergency impairment--A condition where a water-based fire protection system or portion thereof is out of order due to an unexpected occurrence, such as ruptured pipe, an operated sprinkler, or an interruption of the water supply to the system.

(6) Firm--A person or organization as defined in this section.

(7) Full-time--The number of hours that represents the regular, normal, or standard amount of time per week each employee [employees] of the firm devotes [devote] to work-related activities.

(8) Full-time employment basis--An employee is considered to work on a full-time basis if the employee works per week at least the average number of hours worked per week by all other employees of the firm.

(9) Inspection--A visual examination of a system or portion thereof to verify that it appears to be in operating condition and is free of physical damage.

(10) Inspection, testing, and maintenance service--A service program provided by a qualified contractor in which all components unique to the property's systems are inspected and tested at the required times and necessary maintenance is provided and/or recommended. This program includes logging and retention of relevant records.

[(9)] Inspector--A licensed responsible managing employee for a registered firm that is authorized by this chapter to conduct a premium reduction certification inspection of a fire protection sprinkler system in a one-or two-family dwelling.]

(11) [(10)] NFPA--National Fire Protection Association, a nationally recognized standards-making organization.

(12) [(11)] NICET--National Institute for the Certification in Engineering Technologies.

(13) [(12)] Organization--A corporation, partnership or other business association, or governmental entity.

(14) [(13)] Outsource testing service--The testing service selected by the state fire marshal to administer certain designated qualifying tests for licenses under this subchapter.

(15) [(14)] Person--A natural person.

(16) [(15)] Plan--To lay out, detail, draw, calculate, devise, or arrange an assembly of underground and overhead piping and appurtenances in accordance with either adopted fire protection standards or specifications especially designed by an engineer.

(17) [(16)] Registered firm--A person or organization holding a current certificate of registration.

(18) [(17)] Repair--Any work performed after initial installation on fire protection sprinkler systems, not including inspecting or testing.

(19) [(18)] Responsible managing employee--A responsible managing employee, as defined in the Insurance Code, Article 5.43-3, §1(10), and also referenced [known] within this subchapter as an RME.

[(19)] RME--A responsible managing employee, as defined in the Insurance Code, Article 5.43-3, §1(10).]

(20) Sprinkler system--A sprinkler system, for fire protection purposes which:

(A) is an integrated system of underground and overhead piping designed in accordance with fire protection engineering standards;

(B) is an installation including a water supply such as a gravity tank, fire pump, reservoir or pressure tank, and/or connection by underground piping to a city main from the point of connection or valve where the primary purpose of the water is for a fire protection sprinkler system;

(C) includes, as the portion of the sprinkler system aboveground, a network of specially sized or hydraulically designed piping installed in a building, structure, or area, generally overhead, and to which sprinklers are connected in a systematic pattern;

(D) includes a controlling valve and a device for actuating an alarm when the system is in operation; and

(E) is usually activated by heat from a fire and discharges water over the fire area.

(21) Testing--A procedure used to determine the status of a system as intended by conducting periodic physical checks on water-based fire protection systems such as water-flow tests, fire pump tests, alarm tests, and trip tests of dry pipe, deluge, or preaction valves. These tests follow up on the original acceptance test at intervals specified in the applicable adopted standard. [Test--The act of subjecting a fire protection sprinkler system to any procedure necessary to determine whether it is properly installed or operates correctly.]

§34.707. *Adopted Standards.*

The Commissioner [~~commission~~] adopts by reference in their entirety the following copyrighted standards and recommended practices published by and available from the National Fire Protection Association, Inc. (NFPA), Batterymarch Park, Quincy, Massachusetts 02269. A copy of the standards shall be kept available for public inspection in the Office of the State Fire Marshal.

(1) NFPA 13-2002 [1994], Standard for the Installation of Sprinkler Systems;

(2) NFPA 25-1998 [1995], Standard for the Inspection, Testing and Maintenance of Water-Based Fire Protection Systems;

(3) NFPA 13D-2002 [1994], Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured [~~Mobile~~] Homes;

(4) NFPA 13R-2002 [1994], Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height;

(5) NFPA 14-2000 [1993], Standard for the Installation of Standpipe, Private Hydrant and Hose Systems;

(6) NFPA 15-2001 [1990], Standard for Water Spray Fixed Systems for Fire Protection;

(7) NFPA 16-1999 [1995], Standard for the Installation of [~~Deluge~~] Foam-Water Sprinkler and Foam-Water Spray Systems;

(8) NFPA 20-1999 [1993], Standard for the Installation of Stationary Pumps for Fire Protection [~~Centrifugal Fire Pumps~~];

(9) NFPA 22-1998 [1993], Standard for Water Tanks for Private Fire Protection;

(10) NFPA 24-2002 [1992], Standard for the installation of Private Fire Service Mains and Their Appurtenances;

(11) NFPA 30-2000 [1993], Flammable and Combustible Liquids Code;

(12) NFPA 30B-2002 [1994], Code for the Manufacture and Storage of Aerosol Products;

(13) NFPA 307-2000 [1995], Standard for the Construction and Fire Protection of Marine Terminals, Piers, and Wharves;

(14) NFPA 214-2000 [1992], Standard on Water-Cooling Towers;

~~{(15) NFPA 231-1995, Standard for General Storage;}~~

~~{(16) NFPA 231C-1995, Standard for Rack Storage of Materials;}~~

~~{(17) NFPA 231D-1994, Standard for Storage of Rubber Tires;}~~

~~{(18) NFPA 231F-1987, Standard for the Storage of Roll Paper;}~~ and

~~(15) [(19)] NFPA 409-2001 [1995], Standard on Aircraft Hangars.~~

§34.710. *Certificates of Registration.*

(a) - (f) (No change.)

(g) Revised certificates. The change of a firm's name, location, or mailing address requires a revised certificate. Within [~~Certificates requiring changes must be surrendered to the state fire marshal within~~] 14 days after the change requiring the revision ~~the~~ [~~The~~] certificate holder must submit written notification of the necessary change [~~with the surrendered certificate~~], accompanied by the required fee.

(h) (No change.)

(i) Types.

(1) - (2) (No change.)

(3) Underground Fire Main--This certificate permits a fire protection sprinkler system contractor to conduct the sales, installation, maintenance, or servicing, but not the planning, of an assembly of underground piping or conduits that conveys water with or without other agents, used as an integral part of any type of fire protection sprinkler system.

§34.711. *Responsible Managing Employee (RME) License.*

(a) - (f) (No change.)

(g) Types.

(1) RME-General--A license issued to an individual who is designated by a registered firm to assure that any fire protection sprinkler system, as planned, installed, maintained, or serviced, meets the standards provided by law.

(2) RME-Dwelling--A license issued to an individual who is designated by a registered firm to assure that the fire protection sprinkler system for a one- and two-family dwelling, as planned, installed, maintained, or serviced, meets the standards provided by law.

(3) RME-Underground Fire Main--A license issued to an individual who is designated by a registered firm to assure that the underground fire main for a fire protection sprinkler system, as installed, maintained, or serviced, meets the standards provided by law.

(4) RME-General Inspector--A license issued to an individual who is designated by a registered firm to perform the inspection, test and maintenance service for a fire protection sprinkler system in accordance with the standards adopted in this subchapter.

§34.713. *Applications.*

(a) Certificates of registration.

(1) - (4) (No change.)

(5) A registered firm must not conduct any business as a fire protection sprinkler contractor until a full-time RME, as applicable to the business conducted, is employed. An individual with an RME-General Inspector's license does not constitute compliance with the requirements of this subsection.

(6) (No change.)

(7) Insurance required.

(A) (No change.)

(B) Each registered firm must maintain in force and on file in the state fire marshal's office the certificate of insurance identifying the insured and the exact nature of the business insured. In identifying the named insured, the certificate of insurance must include either an assumed name or the name of the corporation; partners, if any; or sole proprietor, as applicable [as required]. Failure to do so will be cause for administrative action [to suspend the firm's certificate of registration].

(C) Evidence of public liability insurance, as required by the Insurance Code, Article 5.43-3, §5, must be in the form of a certificate of insurance executed by an insurer authorized to do business in this state, or ~~until September 1, 1989,~~ a certificate of insurance for surplus lines coverage, secured in compliance with the Insurance Code, Chapter 981 [Article 1-14-2], as contemplated by ~~under the~~ Insurance Code, Article 5.43-3, §5(b).

~~[(D)]~~ If a certificate of registration is to be issued in the name of a corporation, the corporate name must be used on the applicable insurance forms. If the corporation is obtaining a certificate of registration in an assumed name, the insurance must be issued to the corporation doing business as (dba) the assumed name. Example: XYZ Corporation dba XXX Fire Sprinkler Service.}]

~~[(E)]~~ The insurance issued for a partnership must be issued to the name of the partnership or to the names of all the individual partners.}]

~~[(F)]~~ The insurance for a proprietorship must be issued to the individual owner. If an assumed name is used, the insurance must be issued to the individual doing business as (dba) the assumed name. Example: William Jones dba XXX Fire Sprinkler Service.}]

(b) Responsible managing employee licenses.

(1) (No change.)

(2) The following documents must accompany the application as evidence of technical qualifications for a license:

(A) (No change.)

(B) RME-Dwelling:

~~(i)~~ proof of current registration in Texas as a professional engineer [and evidence of the applicant's successful completion of a course, designated by the State Fire Marshal's Office, on the planning, inspection and installation of an NFPA 13D, dwelling fire protection sprinkler system]; or

~~(ii)~~ a copy of the notification letter confirming at least a 70% grade on the test covering dwelling fire protection sprinkler systems, administered by the State Fire Marshal's Office or an outsource testing service, and one of the following [either]:

~~(I)~~ proof of license as an [a] "RME-General" [and evidence of the applicant's successful completion of a course, designated by the State Fire Marshal's Office, on the planning, inspection and installation of an NFPA 13D, dwelling fire protection sprinkler system]; or

~~(II)~~ [evidence of the applicant's successful completion of a course, designated by the State Fire Marshal's Office, on the planning, inspection and installation of an NFPA 13D, dwelling fire protection sprinkler system and] a copy of NICET's notification letter confirming the applicant's successful completion of the test requirements for certification at Level II for fire protection automatic sprinkler system layout and evidence of a current Texas master plumber license; or

~~(III)~~ [evidence of the applicant's successful completion of a course, designated by the State Fire Marshal's Office, on the planning, inspection and installation of an NFPA 13D, dwelling fire protection sprinkler system and] a copy of NICET's notification letter confirming the applicant's successful completion of the test requirements for certification at Level II for fire protection automatic sprinkler system layout and evidence of current employment by a registered fire sprinkler contractor.

(C) (No change.)

(D) RME-General Inspector:

(i) a copy of NICET's notification letter confirming the applicant's successful completion of the examination requirements for certification at Level II for Inspection and Testing of Water-Based Systems; and

(ii) evidence of current employment by a registered fire protection sprinkler system contractor.

(c) (No change.)

§34.714. Fees.

(a)- (c) (No change.)

(d) Fees are as follows:

(1) Certificates of registration:

(A) all initial applications shall include an application fee of--\$50;

(B) initial fee--\$900;

(C) renewal fee (for two years)--\$1,800;

(D) renewal late fee (expired 1 day to 90 days)--\$450;

(E) renewal late fee (expired 91 days to two years)--\$900[~~\$1,800~~];

(2)- (4) (No change.)

(5) Responsible managing employee license (General Inspector):

(A) initial fee--\$50;

(B) renewal fee (for two years)--\$100;

(C) renewal late fee (expired 1 day to 90 days)--\$25;

(D) renewal late fee (expired 91 days to two years)--\$50;

~~(6) [(5)] Duplicate or revised certificate or license or other requested changes to certificates[-] or licenses--\$35;~~

~~(7) [(6)] Test fee (if administered by the State Fire Marshal's Office)--\$50.~~

(e) - (h) (No change.)

§34.716. Installation, Maintenance, and Service.

(a) (No change.)

(b) Upon completion of the installation, the licensed responsible managing employee shall have affixed a contractor's material and test certificate for aboveground and/or underground piping on or near the system riser. If the adopted installation standard does not require testing, all other sections except the testing portion of the contractor's material and test certificate must still be completed. The contractor's material and test certificate shall be obtained from the state fire marshal's office. The certificate shall be distributed as follows:

(1) (No change.)

(2) second copy retained by the installing company at its place of business in a separate file used exclusively by that firm to retain all "Contractor's Material and Test Certificates." The certificates shall be available for examination by the state fire marshal or the state fire marshal's representative upon request. The certificates shall be retained for the life of the system; and [-]

(3) third copy to be sent to the local authority having jurisdiction within 10 days after completion of the installation[; ~~and~~]

~~[(4) fourth copy to be sent to the state fire marshal within 10 days of completion of the installation].~~

(c) Service, maintenance, or testing, when conducted by someone other than an owner, must be conducted by a registered firm and in compliance with the appropriate adopted standards. After January 1, 2008, the inspection, test and maintenance service of a fire protection

sprinkler system, except a one- and two-family dwelling or an underground fire main, must be performed by an individual holding a current RME-General Inspector or RME-General license. A visual inspection not accompanied by service, maintenance, testing, or certification does not require a certificate of registration.

(d) - (f) (No change.)

(g) Each registered firm must employ at least one full-time RME-General or RME-Dwelling licensee at each business office where fire protection sprinkler system planning is performed, who is appropriately licensed to conduct the business performed therein.

(h) The planning of an automatic fire protection sprinkler system shall be performed under the direct supervision of the appropriately licensed RME.

(i) The planning, installation or service of a fire protection sprinkler system must be in accordance with the minimum requirements of the applicable adopted standards in §34.707 of this subchapter (relating to Adopted Standards) except when the plan, installation or service complies with a more recent edition of the standard that has been adopted by the political subdivision in which the system is installed.

#### §34.717. *Sprinkler System Plans.*

(a) (No change.)

(b) Subsequent alterations or additions must be legibly noted on updated plans and provided to the owner. When an alteration consists of 20 sprinklers or less and all floor areas were protected prior to the alteration, updated plans are not required. Updated plans are required for all alterations consisting of more than 20 sprinklers. [However, additions to systems protecting previously unprotected areas also require updated plans.] Updated plans must be maintained by the firm for the life of the sprinkler system.

(c) All plans must contain [bear] the name [signature] and license number of the licensed responsible managing employee, the name, address, phone number [the date of installation, alteration, or addition], and the certificate of registration number of the registered firm.

(1) At least one set of the as-built plans specified in subsection (a) of this section must be signed with an original signature, dated by the RME, and certified that they are in compliance with the adopted NFPA standards. In addition, the plans must contain the license number of the RME; the date of installation, alteration, or addition; the name, address, phone number, and the certificate of registration number of the registered firm. This information shall be in a form of the stamp as set forth in subsection (d) of this section.

(2) At least one set of plans submitted to an authority having jurisdiction, for review, rating, permit, or record purposes must be signed with an original signature, unless waived by the local authority having jurisdiction, dated by the RME, and certified that the plans comply with the adopted NFPA standards. In addition, the plans must contain the license number of the RME, the name, address, phone number, and the certificate of registration number of the registered firm. This information shall be in the form of the stamp as set forth in subsection (d) of this section.

(d) Sample RME plan stamp:

Figure: 28 TAC §34.717(d)

#### §34.718. *Installation Tags.*

(a) Upon completion of the installation of a fire protection sprinkler system, all information for an installation tag must be completed in detail to indicate the water supply test data obtained during

the time of installation. The tag shall be securely attached by a durable method to the riser of each system.

(b) Upon completion of the installation of a fire protection sprinkler system and after performing the required initial tests and inspections, an ITM tag, in addition to an installation tag, shall also be attached to each riser in accordance with the procedures in this subchapter for completing and attaching ITM tags.

(c) A new installation tag must be attached, in addition to the existing installation tag, each time more than twenty sprinkler heads are added to a system.

(d) Installation tags shall remain on the system for the life of the system.

(e) Installation tags may be printed for a multiple period of years.

(f) Installation tags must be white in color, 5 1/4 inches in height, and 2 5/8 inches in width. The tag and attaching mechanism must be sufficiently durable to remain attached to the system for the life of the system.

(g) Installation tags shall contain the following information in the format of the sample tag in subsection (h) of this section:

(1) "DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL" (all capital letters, at least 10-point boldface type);

(2) firm's name, address, phone number and certificate of registration number;

(3) day, month, and year (to be punched);

(4) "THIS TAG CONTAINS IMPORTANT INFORMATION ABOUT THIS SPRINKLER SYSTEM AND SHALL REMAIN ATTACHED TO THE SYSTEM FOR THE LIFE OF THE SYSTEM." (all capital letters, at least 10-point boldface type);

(5) name and address of owner or occupant;

(6) building number, location or system number;

(7) static and flowing pressure of the main drain test taken at the riser or lead-in;

(8) static and residual pressure with the measured GPM flowing of the water supply flow test used to hydraulically design the system; and

(9) signature of service person.

(h) Sample installation tag:

Figure: 28 TAC §34.718(h)

#### §34.719. *Service Tags.*

(a) After any service, all sections of a service tag must be completed in detail, indicating all the services that have been performed, and then the tag must be attached to the respective riser of each system.

(b) After any service, if impairments are found, the service person must attach, in addition to attaching a service tag, the appropriate yellow tag or red tag in accordance with the procedures in this subchapter for completing and attaching yellow and red tags.

(c) A new service tag must be attached each time service is performed.

(d) Service tags shall remain on the system for five years after which time they may only be removed by an authorized employee of a registered firm. An employee of the state fire marshal's office or an

authorized representative of a governmental agency with appropriate regulatory authority may remove excess tags at any time.

(e) Tags may be printed for a multiple period of years.

(f) Tags must be white in color, 5 1/4 inches in height, and 2 5/8 inches in width.

(g) Service tags shall contain the following information in the format of the sample tag as set forth in subsection (h) of this section:

(1) "DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL" (all capital letters, at least 10-point boldface type);

(2) firm's name, address and phone number;

(3) firm's certificate of registration number;

(4) applicable RME's name and license number;

(5) signature of service person;

(6) day, month, and year (to be punched);

(7) type of work (to be punched);

(8) name and address of owner or occupant;

(9) building, location or system number;

(10) a list of services performed;

(11) date any yellow tag conditions were corrected (punch if applicable); and

(12) date any red tag conditions were corrected (punch if applicable).

(h) Sample service tag:

Figure: 28 TAC §34.719(h)

§34.720. Inspection, Test and Maintenance Service (ITM) Tag.

(a) After a new installation or a scheduled inspection, testing and maintenance (ITM) service, all portions of an ITM tag must be completed in detail, indicating the ITM service was performed according to the adopted standards, and the tag must be attached to the respective riser of each system.

(b) After any ITM service, the inspector must complete and attach an ITM tag, and if impairments are found, the inspector must attach the appropriate yellow or red tag in accordance with the procedures in this subchapter.

(c) A new ITM tag must be attached each time an inspection, testing and maintenance service is performed.

(d) ITM tags shall remain on the system for five years after which time they may only be removed by an authorized employee of a registered firm. An employee of the state fire marshal's office or an authorized representative of a governmental agency with appropriate regulatory authority may remove excess tags at any time.

(e) ITM tags may be printed for a multiple period of years.

(f) ITM tags must be light blue in color, 5 1/4 inches in height, and 2 5/8 inches in width.

(g) ITM tags shall contain the following information in the format of the sample tag in subsection (h) of this section:

(1) "DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL" (all capital letters, at least 10-point boldface type);

(2) type of ITM: initial installation, monthly, quarterly, annual, third year, or fifth year (to be punched);

(3) system status after ITM: acceptable, yellow tag attached, or red tag attached (to be punched);

(4) license number;

(5) name of inspector;

(6) signature of inspector;

(7) day, month, and year (to be punched);

(8) firm's name, address, phone number and registration number;

(9) name and address of owner or occupant;

(10) building, location or system number; and

(11) the static and flowing pressure of the main drain test, taken at the time the inspection, testing and maintenance service was performed.

(h) Sample ITM tag:

Figure: 28 TAC §34.720(h)

§34.721. Yellow Tags.

(a) If a fire protection sprinkler system is found to be noncompliant with the applicable NFPA standards or to contain equipment that has been recalled by the manufacturer, but the noncompliance or recalled equipment does not constitute an emergency condition, a completed yellow tag must be attached to the respective riser of each system to permit convenient inspection, to not hamper the system's actuation or operation, and also to indicate that corrective action is necessary.

(b) The signature of the service person on a yellow tag certifies the impairments listed on the tag cause the system to be out of compliance with NFPA standards.

(c) After attaching a yellow tag, the inspector must notify the building owner or the building owner's representative and the authority having jurisdiction in writing of all impairments. The notification must be postmarked, e-mailed, faxed or hand delivered within five business days of the attachment of the yellow tag.

(d) A yellow tag may only be removed by a licensed employee of a registered firm or an authorized representative of a governmental agency with appropriate regulatory authority after the employee or representative completes and attaches a service tag that indicates the impaired conditions were corrected.

(e) Yellow tags may be printed for a multiple period of years.

(f) Yellow tags must be the same size as service tags, and must contain the following information in the format of the tag as set forth in subsection (g) of this section:

(1) "DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL" (all capital letters, at least 10-point boldface type);

(2) firm's name, address and phone number;

(3) firm's certificate of registration number;

(4) license number of RME;

(5) printed name of service person or inspector;

(6) signature of service person or inspector;

(7) day, month, and year (to be punched);

(8) name and address of owner or occupant;

(9) building number, location or system number; and

(10) list of impairments not compliant with NFPA standards.



(g) Sample yellow tag:  
Figure: 28 TAC §34.721(g)

§34.722. Red Tags.

(a) If a fire protection sprinkler system has an impairment which constitutes an emergency impairment, as defined in the adopted edition of NFPA 25, the service person or inspector shall complete and attach a red tag to the respective riser of each system to indicate corrective action is necessary.

(b) Immediately after attaching a red tag, the inspector or service person must orally notify the building owner or the building owner's representative and, where available, the authority having jurisdiction of all impairments. The inspector or service person must also provide written notice to the building owner or the building owner's representative and, where available, the authority having jurisdiction of all impairments, and the written notice must be post-marked, e-mailed, faxed or hand delivered within twenty-four hours of the attachment of the red tag.

(c) The signature of the service person or inspector on the red tag certifies the impairments listed constitute an emergency impairment.

(d) A red tag may only be removed by an authorized employee of a registered firm or an authorized representative of a governmental agency with appropriate regulatory authority after the employee or representative completes and attaches a service tag that indicates the impaired conditions were corrected.

(e) Red tags may be printed for a multiple period of years.

(f) Red tags shall be the same size as service tags.

(g) Red tags shall contain the following information in the format of the sample tag as set forth in subsection (h) of this section:

(1) "DO NOT REMOVE BY ORDER OF THE TEXAS STATE FIRE MARSHAL" (all capital letters, at least 10-point boldface type);

(2) firm's name, address and phone number;

(3) firm's certificate of registration number;

(4) license number of RME;

(5) printed name of service person or inspector;

(6) signature of service person or inspector;

(7) day, month, and year (to be punched);

(8) name and address of owner or occupant;

(9) building number, location or system number; and

(10) list of emergency impairments.

(h) Sample red tag:  
Figure: 28 TAC §34.722(h)

§34.723. Enforcement.

(a) The state fire marshal is authorized and directed to enforce the provisions of the Insurance Code Article 5.43-3 and this subchapter. The state fire marshal shall make, or cause to be made, inspections from time to time and as circumstances dictate to determine that licensed firms and persons engaged in the business act in conformity with the requirements of the law and this subchapter.

(b) Such inspections shall be made by the state fire marshal or the state fire marshal's representative. When an inspection discloses violations of the law or this subchapter, the firm or person responsible for correcting the violation shall be notified within 30 days after

completion of the inspection report. In all cases in which a violation is not corrected within a reasonable time, the state fire marshal shall take such steps as may be necessary to enforce correction of the violation and may initiate appropriate administrative action.

§34.724. Administrative Actions.

The failure to comply with the provisions of this subchapter and the provisions of Insurance Code, Article 5.43-3 by certificate holders or licensees may subject them, as provided in Government Code §417.010, to administrative action including, but not limited to, suspension, revocation, or refusal to issue or renew a license or a certificate of registration or issuance of a cease and desist order and/or administrative penalty and/or order for restitution to persons harmed.

§34.725. Severability.

If any provision of this subchapter or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of this subchapter which can be given effect without the invalid provisions or application. To this end, all provisions of this subchapter are declared to be severable.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 24, 2005.

TRD-200504801

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: December 4, 2005

For further information, please call: (512) 463-6327



**28 TAC §§34.718 - 34.723**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Insurance or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Department of Insurance proposes the repeal of §§34.718 - 34.723, concerning fire protection sprinkler rules. The repeal of these sections will allow for the proposal of new and amended rules that reorganize and renumber the sections and provide for the addition of new rules. Notice of the new and amended §§34.718-34.725, concerning the same general subject matter and concerning new installation and inspection labels, appears elsewhere in this issue of the Texas Register.

Paul Maldonado, State Fire Marshal, has determined that during the first five years that the proposed repeal is in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the sections. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Mr. Maldonado has also determined that for each year of the first five years the repeal of the sections is in effect, the public benefit anticipated as a result of the administration and enforcement of the repealed sections will be the reorganization of these sections which will result in added safety through the increased efficiency of the registered firms who install and service fire protection sprinkler systems and in making it easier for fire

protection sprinkler system firms and local fire officials to locate the necessary requirements for compliance with fire protection sprinkler system installation and servicing regulations as well as to more accurately document the performance and status of fire protection sprinkler systems. There is no anticipated economic cost to persons who are required to comply with the proposed repeal. There is no anticipated difference in cost of compliance between small and large businesses.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 4, 2005 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-1C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Paul Maldonado, State Fire Marshal, Texas Department of Insurance, P.O. Box 149221, Mail Code 108-FM, Austin, Texas 78714-9221. A request for a public hearing must be submitted separately to the Office of Chief Clerk.

Repeal of §§34.718 - 34.723 is proposed pursuant to the Insurance Code Article 5.43-3 and §36.001. Article 5.43-3, §3 provides that the Commissioner of Insurance may adopt rules necessary for the administration of this article. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The proposed repeal affects the following statute: Insurance Code Article 5.43-3.

§34.718. *Service Tags.*

§34.719. *Yellow Tags.*

§34.720. *Red Tags.*

§34.721. *Enforcement.*

§34.722. *Administrative Actions.*

§34.723. *Severability.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 24, 2005.

TRD-200504798

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: December 4, 2005

For further information, please call: (512) 463-6327



## TITLE 34. PUBLIC FINANCE

### PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

#### CHAPTER 25. MEMBERSHIP CREDIT

##### SUBCHAPTER B. COMPENSATION

###### 34 TAC §25.34

The Board of Trustees ("Board") of the Teacher Retirement System of Texas ("TRS") proposes amendments to §25.34, concerning changes to the administration of the membership waiting period.

The amendments to §25.34 will allow TRS to delete unnecessary provisions relating to administration of the 90-day membership waiting period, which was enacted by the 78th Legislature (Act of June 2, 2003, 78th Legislature, Regular Session, Chapter 201, §43, 2003 Texas General Laws 812, 824). The statute requiring the 90-day waiting period for TRS membership expired by operation of law on September 1, 2005. Consequently, TRS proposes to retain only the provisions that may be useful as reference in the administration of the purchase of waiting period service credit by eligible members who were affected by the waiting period.

Tony C. Galaviz, TRS Chief Financial Officer, estimates that, for each year of the first five years the proposed amended rule will be in effect, there will be no foreseeable implications relating to cost or revenues of the state or local governments as a result of enforcing or administering the amended rule. Rather, any measurable impact on the cost or revenues of the state or local governments is the result of the legislative enactment.

For each year of the first five years that the amended rule will be in effect, Mr. Galaviz has determined that the public benefit will be to provide notice, clarification, and guidance to TRS members regarding the termination of the 90-day membership waiting period. Any probable economic costs to persons required to comply with the amended rule as proposed, including TRS members, is the result of the legislative enactment. There will be no effect on a local economy because of the proposal, and therefore no local employment impact statement is required under §2001.022, Government Code. Any measurable impact on a local economy or local employment is the result of the legislative enactment. Moreover, there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the proposed amended rule.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. To be considered, written comments must be received by TRS no later than 30 days after publication of this notice.

Statutory Authority: §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system.

Cross-reference to Statute: §822.001, Government Code, amended by Act of June 2, 2003, 78th Legislature, Regular Session, Chapter 201, §43, subsection (f), 2003, Texas General Laws 812, 825, which provides for the expiration of the 90-day membership waiting period.

§25.34. [~~Administration of~~] *Membership Waiting Period.*

[(a) For an individual who begins employment on or after September 1, 2003; with an employer that is a TRS reporting entity and who is not a member of TRS as of the date of employment, eligibility for TRS pension plan membership begins on the first calendar day after the end of a 90 calendar day waiting period.]

[(b) For purposes of this section, an individual who is not considered to be a TRS member includes an individual who previously terminated membership in the retirement system through withdrawal of contributions and did not resume membership prior to a date of employment that is on or after September 1, 2003.]

{(c) In determining the date of eligibility for TRS pension plan membership for an employee who is subject to the waiting period, the following provisions apply:}

{(1) An employer shall count the date of employment as the first day of the 90-day waiting period.}

{(2) An employer shall count calendar days of an employment period on or after September 1, 2003, towards the waiting period, regardless of whether the days are in different school years.}

{(3) An employer shall count calendar days on or after September 1, 2003, during which the individual previously served as an employee with another TRS reporting entity towards the waiting period.}

{(4) An employer shall not count any calendar days between periods of employment towards the waiting period.}

{(5) Service provided by an employee on one calendar day to more than one employer that is a TRS reporting entity shall count as only one calendar day in the waiting period.}

{(6) Service of a type that would not otherwise qualify the employee for TRS membership may not fulfill any part of the waiting period requirement.}

{(d) For the purpose of administering this section, the date of employment means the date on which an employee begins to perform service for an employer that is a TRS reporting entity and the service is of a type that would otherwise qualify the employee for membership in the TRS pension plan, as provided under Chapter 25, Subchapter A, of this title, (relating to Service Eligible for Membership) if the individual were not subject to the waiting period described in this section. If the date of employment is a holiday or another type of day on which the employer does not normally require actual service to be performed by an employee, the employer may nevertheless count the day as the date of employment if the employer considers the individual to be an employee on that day.}

{(e) An employer shall begin to submit member and other required contributions to TRS on compensation paid to an employee for the entire pay period that contains the first date of the employee's eligibility for membership. For the purpose of this section, a pay period is the normal, established period of employment for which the employer regularly pays compensation to the employee, regardless of the date on which the employer actually pays the compensation. For an employee subject to the waiting period, an employer's first report to TRS for the employee shall include the date of employment and the date on which the employee became eligible for TRS membership after the waiting period.}

{(f) An employer shall notify TRS immediately if it has failed to report an employee who was eligible for TRS membership and shall begin to report the employee as a member no later than the month immediately following the month in which the employer discovered the error. The employer shall correct any previous reports filed with TRS and make contributions and deposits as required by this title.}

{(g) Because participation in the Optional Retirement Program ("ORP") under Gov't Code, Chapter 830, is in lieu of participation in TRS, a person employed on or after September 1, 2003, and otherwise eligible to elect to participate in ORP must meet the TRS membership eligibility requirements, including the waiting period as applicable under this section, before the person may elect to participate in ORP. An election to participate in ORP must be made before the 91st day after becoming eligible to make the election, as required by Gov't Code, Chapter 830, §830.102, but may not be made before the date on which an employee is eligible for TRS membership.}

{(h) Upon request by TRS, an employer or an employee shall provide copies of, or otherwise make available, any records that TRS determines are necessary to administer this section.}

{(i) An employee [who is] subject to the 90-day waiting period in effect from September 1, 2003, through August 31, 2005, [specified in this section] may be eligible to receive a year of TRS service credit if the employee was [is] employed in a TRS-covered position and participated [participates] as a contributing member of TRS for the amount of time in a school year required by this title, including §25.1 of this title (relating to Full-Time Service) and §25.131 of this title (relating to Required Service). Employment service prior to the date on which a person is eligible for TRS membership [under this section] may not be used to meet the minimum requirements for service creditable in a school year unless a member purchases it in accordance with applicable requirements.

{(j) This section is effective on September 1, 2003, and expires September 1, 2005, unless legislation is enacted extending the provisions of Gov't Code, Chapter 822, §822.001 and Gov't Code, Chapter 823, §823.002, as amended by HB 3459, 78th Legislature.}

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Ronnie G. Jung

Executive Director

Teacher Retirement System of Texas

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For further information, please call: (512) 542-6438



## SUBCHAPTER L. OTHER SPECIAL SERVICE CREDIT

### 34 TAC §25.163

The Board of Trustees ("Board") of the Teacher Retirement System of Texas ("TRS") proposes amendments to §25.163, concerning changes to purchase of additional service credit under the service credit purchase option.

The amendments to §25.163 will allow TRS to implement House Bill 3169 and Senate Bill 1691, 79th Legislature, Regular Session (2005), which repealed the option to purchase one, two, or three years of additional service credit under §823.405, Government Code, effective January 1, 2006. The amendments provide that, unless the service credit is purchased by December 31, 2005 or an installment payment agreement is filed with TRS by that date, the opportunity to purchase this service credit will be permanently forfeited. TRS is not proposing changes to the three tables included with the section (each shown as a "Figure") that set out the costs to purchase one, two, or three years of service.

Tony C. Galaviz, TRS Chief Financial Officer, estimates that, for each year of the first five years the proposed amended rule will be in effect, there will be no foreseeable implications relating to cost or revenues of the state or local governments as a result of enforcing or administering the rule. Rather, any measurable

impact on the cost or revenues of the state or local governments is the result of the legislative enactment.

For each year of the first five years that the proposed amended rule will be in effect, Mr. Galaviz has determined that the public benefit will be to provide notice, clarification, and guidance to TRS members regarding the December 31, 2005 deadline to purchase additional service credit under the service credit purchase option. Any probable economic costs to local employers required to comply with the amended rule is the result of the legislative enactment. There will be no effect on a local economy because of the proposal, and therefore no local employment impact statement is required under §2001.022, Government Code. Any measurable impact on a local economy or local employment is the result of the legislative enactment. Moreover, there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the proposed amended rule.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. To be considered, written comments must be received by TRS no later than 30 days after publication of this notice.

Statutory Authority: §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system.

Cross-reference to Statute: House Bill 3169 and §55(b) and §62 of Senate Bill 1691, 79th Legislature, Regular Session (2005), repealing §823.405, Government Code, but providing that the repeal does not affect an installment agreement entered into before January 1, 2006.

*§25.163. Service Credit Purchase.*

(a) Effective September 1, 2001, an eligible member may purchase one, two or three years of equivalent membership service credit in the Teacher Retirement System of Texas ("TRS") in accordance with Government Code, §823.405 and subject to the approval of TRS and to any plan qualification requirements and limits under the Internal Revenue Code of 1986, as amended from time to time. A member is eligible to establish up to three years of equivalent membership service credit if, at the time of the purchase, the member has at least seven years of actual membership service in TRS. Service credit must be purchased no later than December 31, 2005, by payment in full to TRS or by filing a completed and signed installment payment agreement with TRS. After December 31, 2005, purchase of this service credit will not be available due to the repeal of Government Code, §823.405, effective January 1, 2006. Installment agreements that are terminated, including by failure to pay amounts required under the agreement, will result in the permanent loss of eligibility to purchase this service credit after December 31, 2005.

(b) "Actual membership service" has the meaning given to "membership service" in Government Code, §821.001(11), and means service during a time that a person is both an employee, as defined in Government Code, §821.001(6), and a member of the retirement system.

(c) Equivalent membership service credit under Government Code, §823.405 may be established by depositing with TRS the amounts described in this subsection. For each year of equivalent membership service credit described in this section and approved by TRS, the eligible member must deposit the actuarial present value, at the time of deposit, of the additional standard retirement annuity benefits that would be attributable to the service credit to be purchased under this section. Upon receipt by TRS of the required amount, the member will be credited with the additional year(s) of service credit

purchased up to the maximum years of service credit allowed under Government Code, §823.405.

(d) To calculate these amounts, TRS will use the cost factors obtained from the three Service Purchase Tables furnished by the TRS actuary of record. Each of the tables cross-references the member's age in rows with years of credited service (before purchase) in columns. The intersection of the participant's age and service is the cost per \$1,000 of salary. ~~When [The cost factor remains constant after 34 years of service. Therefore, when]~~ an eligible member's service credit exceeds the last column for years of service credit on the tables [34 years], the applicable cost factor is found at the intersection of the member's age and the last column for ~~[34]~~ years of service credit. TRS will calculate the cost to purchase service under this section by dividing the salary by 1000 and multiplying the resulting quotient by the appropriate cost factor obtained from the tables. Table 1 sets forth the cost, per \$1,000 of salary, to purchase one year of service. Table 2 sets forth the cost, per \$1,000 of salary, to purchase two years of service. Table 3 sets forth the cost, per \$1,000 of salary, to purchase three years of service. For purposes of this calculation, the term "salary" is defined as follows:

(1) For the upper region of each table (where the factors appear above the line in italics), salary is the greater of current annual salary or the average of the member's highest three years of compensation; and

(2) For the lower region of each table (where the factors appear below the line in bold), salary is the average of the member's highest three years of compensation. A member's highest three years of compensation shall be calculated as if the member were retiring at the time the service credit is purchased. The lower region of each table (where factors appear below the line in bold) reflects those age and service combinations where the purchase of service credit results in the immediate eligibility of the member for unreduced retirement benefits. Figure 1: 34 TAC §25.163(d)(2) (No change.) Figure 2: 34 TAC §25.163(d)(2) (No change.) Figure 3: 34 TAC §25.163(d)(2) (No change.)

(e) The purchase cost described in subsection (d) of this section assumes a lump-sum deposit will be made. If deposits are made over a period of time as allowed by TRS, the purchase cost will be adjusted to reflect the actuarial present value of the benefits attributable to the purchased service credit.

(f) Service credit purchased under this section may ~~[not]~~ be used to determine eligibility for the Texas Public School Retired Employees Group Insurance Program (TRS-Care) to the extent permitted under Chapter 1575, Texas Insurance Code ~~[per Insurance Code, Article 3.50-4, §2(10)(A)]~~.

(g) Payments for TRS service credit obtained through service credit purchase shall be paid in a manner consistent with any applicable limitations of 26 U.S.C. §415, including any applicable limitations on payments as a percentage of compensation of the participant from the employer for the school year in which the payments are sought to be made, pursuant to Internal Revenue Code §415. A member, or a beneficiary of a member if service is sought to be established after the death of the member, may not be permitted to purchase TRS service credit under this section if payments exceed applicable limitations on contributions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Ronnie G. Jung  
Executive Director  
Teacher Retirement System of Texas  
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## CHAPTER 31. EMPLOYMENT AFTER RETIREMENT

### SUBCHAPTER A. GENERAL PROVISIONS

#### 34 TAC §31.2

The Board of Trustees ("Board") of the Teacher Retirement System of Texas ("TRS") proposes amendments to §31.2, regarding employers' reporting of employed retirees.

TRS currently requires employers to report the employment of retirees for purposes of administering laws governing employment after retirement. The proposed amendments to §31.2 will allow TRS to implement new §824.6022, Government Code, which requires employers to file a monthly certified statement of employment of retirees and makes the failure of an administrator to do so an offense. The proposed amendments broaden the scope of the required report to include information about the payment of the employer pension surcharge and health benefit surcharge. The proposal requires TRS-covered employers to report the number retirees working in TRS-covered positions, the total amount of salary paid to employed retirees who are not exempt from the pension surcharge, and the total amount of any pension or health benefit surcharge paid.

Tony C. Galaviz, TRS Chief Financial Officer, estimates that, for each year of the first five years that the proposed amended rule will be in effect, there will be no foreseeable implications relating to cost or revenues of the state or local governments as a result of enforcing or administering the amended rule. Rather, any measurable impact on the cost or revenues of the state or local governments is the result of the legislative enactment.

For each year of the first five years that the proposed amended rule will be in effect, Mr. Galaviz has determined that the public benefit will be to provide notice, clarification, and guidance to TRS-covered employers regarding the reporting of employed retirees. Any probable economic costs to persons required to comply with the amended rule as proposed, including local employers, is the result of the legislative enactment. There will be no effect on a local economy because of the proposal, and therefore no local employment impact statement is required under Government Code, §2001.022. Any measurable impact on a local economy or local employment is the result of the legislative enactment. Moreover, there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the proposed amended rule.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. To be considered, written comments must be received by TRS no later than 30 days after publication of this notice.

Statutory Authority: Government Code, §824.601, which authorizes the Board to adopt rules necessary for administering laws in Government Code, Chapter 824, Subchapter G, concerning loss of benefits on resumption of service, including §824.601 and §824.6022; and Government Code, §825.102, which authorizes

the Board to adopt rules for the administration of the funds of the retirement system.

Cross-reference to Statute: Government Code, §824.601, which provides for loss of annuity by any service or disability retiree who works for a TRS-covered employer unless such employment is exempted by law from forfeiture of annuity; and Government Code, §824.6022, which requires employers to file a monthly certified statement of employment of retirees and makes it an offense for an administrator who is responsible for filing such a statement to knowingly fail to do so.

#### §31.2. Monthly Certified Statement.

(a) For purposes of administering Government Code, §824.601, a [A] reporting entity shall furnish Teacher Retirement System of Texas (TRS) a monthly certified statement of all employment of TRS service or disability retirees. Effective June 20, 2003, the certified statement must include information regarding employees of third party entities if the employees are service or disability retirees who were first employed by the third party entity on or after May 24, 2003 and are performing duties or providing services on behalf of or for the benefit of the reporting entity. The statement shall contain information necessary for the executive director or his designee to classify employment as one of the following:

- (1) substitute service;
- (2) employment that is not more than one-half time;
- (3) employment under the six month exception;
- (4) employment under the acute shortage area exception;
- (5) employment under the principal or assistant principal exception;
- (6) employment under the bus driver exception;
- (7) employment under the faculty member of a professional nursing program exception;
- (8) ~~[(7)]~~ full-time employment;
- (9) ~~[(8)]~~ trial employment of disability retiree for three months; or
- (10) ~~[(9)]~~ employment of a service retiree who retired before January 1, 2001.

(b) For purposes of administering Government Code, §825.4092 and Insurance Code, §1575.204, a reporting entity shall furnish TRS a monthly certified statement reflecting the number of TRS service and/or disability retirees working in positions eligible for TRS membership, the total amount of salary paid to retirees who are not exempt from the payments due under §31.41 of this title (relating to Return To Work Employer Pension Surcharge), the total amount paid on all retirees under §31.41 of this title, the total amount due under §41.4 of this title (relating to Employer Health Benefit Surcharge), and any other information requested by TRS for the administration of these sections. The certified statement must include information regarding employees of third party entities if the employees are service or disability retirees who were first employed by the third party entity on or after May 24, 2003, are working in positions eligible for TRS membership, and are performing duties or providing service on behalf of or for the benefit of the reporting entity.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Ronnie G. Jung

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For further information, please call: (512) 542-6438



## SUBCHAPTER B. EMPLOYMENT AFTER SERVICE RETIREMENT

### 34 TAC §31.18, §31.19

The Board of Trustees ("Board") of the Teacher Retirement System of Texas ("TRS") proposes amendments to §31.18, regarding the bus driver exception and new §31.19, relating to the professional nursing program faculty exception to employment resulting in forfeiture of retirement annuity.

The Legislature recently added new language to the statute concerning the bus driver exception to restrictions on employment after retirement. Act of May 27, 2005, 79th Legislature, Regular Session, Senate Bill 1691, §16, Chapter 1359 (to be codified as amendments to Texas Government Code Annotated, §824.602). The new language requires that bus driving must be the retiree's primary employment in order to qualify for the exception. Before the enactment of the statutory amendments, there was no minimum requirement set by law for the amount of bus driving required for this exception. By current Board rule, the bus driver exception was available to a normal age retiree who daily drove at least one bus route approved by the Texas Education Agency. The amended statute does not define "primary employment" but requires that other employment must be of a lesser nature. The proposed amendments provide that employment as a bus driver is "primary" if the total amount of other employment is less than one-half time. The proposed amendments also require that the retiree must actually drive the bus. Language describing the type of bus routes as "TEA approved" is amended to reflect the current practice of TEA's issuing guidelines for bus routes rather than approving bus routes. Other changes reflect reformatting the rule into subsections. The change in the law applies to members who retire after September 1, 2005.

The Legislature also amended statute to add a new exception for faculty members of a professional nursing program under the employment after retirement laws. Act of May 27, 2005, 79th Legislature, Regular Session, Senate Bill 132, §8, Chapter 674 (to be codified as amendments to Texas Government Code Annotated, §824.602). The new language prohibits TRS from withholding a monthly benefit from a retiree employed as a faculty member in an undergraduate or graduate professional nursing program, provided the retiree has been separated from service with all TRS-covered employers for a period of 12 months. Under the amended statute, the exception became effective beginning September 1, 2005 and will terminate at the end of the spring semester 2015. Proposed new §31.19 clarifies who is a faculty member for purposes of this rule and that the 12-month separation period must be 12 consecutive months. The proposed new rule also establishes procedures for making the election and filing the appropriate form with TRS. The proposed new rule is patterned after the rules regarding the acute shortage area and the principal or assistant principal exceptions.

Tony C. Galaviz, TRS Chief Financial Officer, estimates that, for each year of the first five years that proposed amendments to §31.18 and new §31.19 will be in effect, there will be no foreseeable implications relating to cost or revenues of the state or local governments as a result of enforcing or administering the amended or new rule. Rather, any measurable impact on the cost or revenues of the state or local governments is the result of the legislative enactment.

For each year of the first five years that the proposal will be in effect, Mr. Galaviz has determined that the public benefit will be to provide notice, clarification, and guidance to TRS-covered employers regarding the employment of retirees serving as bus drivers or faculty of professional nursing programs. Any probable economic costs to persons required to comply with the amended or new rule as proposed, including retirees and local employers, is the result of the legislative enactment. There will be no effect on a local economy because of the proposal, and therefore no local employment impact statement is required under Government Code, §2001.022. Any measurable impact on a local economy or local employment is the result of the legislative enactment. Moreover, there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the proposed amended or new rule.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. To be considered, written comments must be received by TRS no later than 30 days after publication of this notice.

Statutory Authority: Government Code, §824.601, which authorizes the Board to adopt rules necessary for administering laws in Government Code, Chapter 824, Subchapter G, concerning loss of benefits on resumption of service, including §824.602; and Government Code, §825.102, which authorizes the Board to adopt rules for the administration of the funds of the retirement system.

Cross-reference to Statute: Government Code, §824.602, which provides exceptions to the loss of annuity by any service or disability retiree who works for a TRS-covered employer.

#### *§31.18. Bus Driver Exception.*

(a) A retiree who retired before September 1, 2005 under Government Code, §824.202(a) without reduction for retirement at an early age and who actually drives at least one bus route per day that complies with the guidelines established by the Texas Education Agency (TEA) [approved bus route per day] will be considered eligible for the bus driver exception under Government Code, §824.602(a)(7) [(6)].

(b) A retiree who retired on or after September 1, 2005 under Government Code, §824.202(a) without reduction for retirement at an early age who actually drives at least one bus route per day that complies with the guidelines established by the Texas Education Agency (TEA) and whose primary employment is as a bus driver will be considered eligible for the bus driver exception under Government Code, §824.602(a)(7).

(c) For purposes of subsection (b) of this section, employment as a bus driver is considered the retiree's primary employment if the total amount of any other employment is less than one-half time as provided in §31.14 of this title (relating to One-half Time Employment).

(d) Employment by a third party entity is considered employment by a Texas public educational institution unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003.

(c) ~~[(b)]~~ In the event the retiree wants to use the bus driver exception but has not been reported in that manner, the reporting entity must notify TRS in writing by amending the previous TRS 118, Employment of Retired Member, report(s).

§31.19. Faculty Member of Professional Nursing Program.

(a) Beginning on September 1, 2005, a person who is employed on a full-time basis as a faculty member in an undergraduate or graduate professional nursing program as defined by Education Code, §54.221 is considered eligible for employment after retirement under the exception described in Government Code, §824.602(a)(8). Employment by a third party entity is considered employment by a Texas public educational institution unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003.

(b) For purposes of the exception described in this section, a faculty member is a retiree employed by an undergraduate or graduate professional nursing program as described in Education Code, §54.221 to serve as a full-time member of its faculty or staff with duties that include teaching, research, administration, or performing other professional services.

(c) A retiree must elect in writing on a form prescribed by TRS to take advantage of the exception described by this section no later than the end of the first month of employment under this section or 30 days after the date of employment, whichever is later.

(d) If the form is not received and the retiree continues to work on a full-time basis for more than six months the annuity payment will be suspended each month work is performed until the election form is received by TRS.

(e) In the event the retiree elects to use the exception described in this section and has not been reported in that manner, the reporting entity must notify TRS in writing by amending the Employment of Retired Member(s) report.

(f) For the exception described in this section, the 12 month separation period described in Government Code, §824.602(a)(8) may be any 12 consecutive months following the month of retirement so long as the retiree is not employed in any position or capacity by a public educational institution during any part of each of the 12 months. Employment by a third party entity is considered employment by a public educational institution covered by TRS for purposes of this subsection.

(g) The exception described in this section expires at the end of the spring semester in 2015.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Ronnie G. Jung

Executive Director

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## CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

### SUBCHAPTER A. RETIREE HEALTH CARE BENEFITS (TRS-CARE)

#### 34 TAC §§41.1, 41.2, 41.5 - 41.7, 41.10, 41.11

The Board of Trustees ("Board") of the Teacher Retirement System of Texas ("TRS") proposes amendments to the following rules concerning the health benefits program under the Texas Public School Retired Employees Group Benefits Act ("TRS-Care"): §41.1, relating to initial enrollment periods for TRS-Care; §41.2, relating to additional enrollment opportunities; §41.5, relating to payment of contributions; §41.6, relating to required contributions from public schools; §41.7, relating to effective dates of coverage; §41.10, relating to eligibility to enroll in TRS-Care; and §41.11, relating to years of service credit used to determine premiums for TRS-Care. Most of the proposed amendments reflect changes arising from the enactment of Senate Bill ("SB") 1691 (Act of May 27, 2005, 79th Legislature, Regular Session, Chapter 1359).

Proposed substantive amendments to §§41.1, 41.7, and 41.10 result from changes SB 1691 made to eligibility requirements for TRS-Care in Insurance Code, §1575.004. To meet the definition of a "retiree" under TRS-Care, SB 1691 requires service retirees who retire on or after September 1, 2005 to have at least 10 years of service credit in TRS and either meet the "Rule of 80" (the sum of the retiree's age and years of service credit equals 80 or more) or have 30 years of service credit at retirement. To satisfy the requirement to have at least 10 years of service credit in TRS, these retirees may include up to five years of military service credit but not any other service credit purchased as equivalent or special service credit. All TRS service credit, however, would count toward the Rule of 80 and the 30-year service credit requirements. Conforming the rule to the changes made in statute, proposed amendments to §41.1 would delete the provision granting a second initial enrollment period to certain retirees who took a service retirement after September 1, 2004. Proposed changes to §41.7 would delete language related to the "second initial enrollment period" proposed for deletion in §41.1 and substitute language addressing the effective date of coverage for individuals allowed to enroll or upgrade their plan tier in TRS-Care during the period from September 1, 2005 through October 31, 2005, as authorized by Board resolution adopted July 8, 2005. The proposed amendments to §41.10 reflect the changes SB 1691 made to the TRS-Care definition of a "retiree." Along with the proposed amendments to §41.2, the proposed non-substantive changes to §§41.1, 41.7, and 41.10 provide a more accurate reference to the TRS-Care program.

Proposed amendments to §41.5 establish the consequences for a retiree's failure to pay a premium for optional TRS-care coverage following notice of delinquency and opportunity to make payment. These proposed amendments replace those published in the April 22, 2005 issue of the *Texas Register* (30 TexReg 2379) that were subsequently withdrawn. The proposed amendments do the following: they permit rather than require TRS to deduct premium payments from a retiree's annuity; as was provided in the prior proposed amendments, the revised proposal downgrades a surviving spouse to free basic coverage upon default, in lieu of being completely canceled from participation in any level of TRS-Care; they advise a retiree or surviving spouse of the limited opportunities to restore higher coverage levels after being downgraded for failure to pay a premium; and they delete

unnecessary language regarding disability retirees. In addition, the revised amendments make non-substantive changes in re-organizing the subsections of the rule.

The proposed amendment to §41.6 reflects the increase the most recent general appropriations act (Act of May 29, 2005, 79th Legislature, Regular Session, Senate Bill 1, Chapter 1369) makes in the public school contribution rate to the TRS-Care fund, from 0.40% to 0.55% of each active employee's salary.

Proposed amended §41.11 implements the provision in SB 1691 removing limitations on the types of service credit that can be used in determining a retiree's TRS-Care premium.

Tony C. Galaviz, TRS Chief Financial Officer, estimates that, for each year of the first five years that proposed amendments to §§41.1, 41.2, 41.5 - 41.7, 41.10, and 41.11 will be in effect, there will be no foreseeable implications relating to cost or revenues of the state or local governments as a result of enforcing or administering the amended rules. Rather, any measurable impact on the cost or revenues of the state or local governments is the result of legislative enactment.

For each year of the first five years that the proposal will be in effect, Mr. Galaviz has determined that the public benefit will be to provide notice, clarification, and guidance to participants in TRS-Care and affected TRS-covered employers regarding changes in the TRS-Care program. Any probable economic costs to persons required to comply with the amended rules as proposed, including TRS-Care participants and affected local employers, is the result of legislative enactment. There will be no effect on a local economy because of the proposal, and therefore no local employment impact statement is required under Government Code, §2001.022. Any measurable impact on a local economy or local employment is the result of legislative enactment. Moreover, there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the proposed amended rules.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. To be considered, written comments must be received by TRS no later than 30 days after publication of this notice.

**Statutory Authority:** For the proposed amendments to §§41.1, 41.2, 41.5 - 41.7, 41.10, and 41.11--Insurance Code, §1575.052, which authorizes the Board to adopt rules it considers necessary to implement and administer TRS-Care and associated fund.

**Cross-reference to Statute:** For the proposed amendments to §§41.1, 41.2, 41.5, 41.7, 41.10, and 41.11--Insurance Code, Chapter 1575, which provides for the establishment and administration of the TRS-Care program and fund, and §38 of SB 1691, which amends Insurance Code, §1575.004 relating to definition of retiree; for the proposed amendments to §41.6--Insurance Code, Chapter 1575, and §42 of SB 1691, which amends Insurance Code, §1575.204, relating to public school contributions to the TRS-Care fund.

§41.1. Initial Enrollment Periods for the Health Benefits Program Under the Texas Public School Retired Employees Group Benefits Act [Program] (TRS-Care).

(a) The initial enrollment period in the health benefits program under the Texas Public School Retired Employees Group Benefits Act [Program] (TRS-Care) for eligible Teacher Retirement System of Texas (TRS) retirees who take a service retirement before September 1, 2004, expires at the end of the later of:

(1) - (2) (No change.)

(b) The initial enrollment period in TRS-Care for TRS retirees who take a service retirement after September 1, 2004, and who are eligible to enroll in TRS-Care at the time of retirement expires at the end of the later of:

(1) - (2) (No change.)

(c) - (e) (No change.)

[(f) TRS retirees who take a service retirement after September 1, 2004 and who are eligible to enroll in TRS-Care at the time of retirement under only subsection (e)(4) of §41.10 of this chapter (relating to Eligibility to Enroll in the Texas Public School Retired Employees Group Benefits Program) ("Grandfathered Retirees") will have a second initial enrollment period when they first meet the requirements to enroll in TRS-Care under either subsection (e)(1), (e)(2), or (e)(3) of §41.10 of this chapter.]

[(1) This second initial enrollment period is also available to Grandfathered Retirees who waive or drop their TRS-Care coverage during or after their initial enrollment period. The second initial enrollment period is available when the Grandfathered Retirees first meet the requirements to enroll in TRS-Care under either subsection (e)(1), (e)(2), or (e)(3) of §41.10 of this chapter.]

[(2) The second initial enrollment period expires at the end of the later of:]

[(A) the 31st day following the last day of the month in which the Grandfathered Retiree first becomes or would have become eligible to enroll in TRS-Care under subsection (e)(1), (e)(2), or (e)(3) of §41.10 of this chapter; or]

[(B) the 31st day after the date of the notice of opportunity to enroll that is sent to the Grandfathered Retiree at the retiree's last known address, as shown in the TRS-Care records.]

[(3) A Grandfathered Retiree can choose any tier of TRS-Care coverage during the second enrollment period.]

(f) [(g)] Notwithstanding the other provisions of this section:

(1) A retiree may enroll a new spouse within 31 days of the date on which the retiree marries;

(2) A retiree or surviving spouse may enroll a child who becomes a dependent as defined by §1575.003, Insurance Code, within 31 days after the date on which the child becomes a dependent eligible for coverage under TRS-Care; and

(3) A participant shall be entitled to all applicable COBRA rights under the Federal Public Health Service Act.

(g) [(h)] If a retiree or surviving spouse fails to enroll a newly eligible spouse or dependent child within the time periods set out in subsection (f) [(g)] of this section, the retiree or surviving spouse will not be able to enroll the spouse or dependent child in TRS-Care until a subsequent enrollment period.

§41.2. Additional Enrollment Opportunity.

(a) - (e) (No change.)

(f) The additional enrollment opportunity for those eligible participants who enroll in TRS-Care after August 31, 2004, and who are 65 years old or older when they enroll in TRS-Care runs concurrently with the initial enrollment period as set out in §41.1 of this chapter relating to Initial Enrollment Periods for the Health Benefits Program Under the Texas Public School Retired Employees Group Benefits Act [Program] (TRS-Care).

(g) An eligible participant who is not enrolled in Medicare Part A at the time of his or her additional enrollment opportunity can enroll



in the next-higher TRS-Care coverage tier, as determined by TRS-Care, and add dependent coverage in that same coverage tier.

(h) - (m) (No change.)

*§41.5. Payment of Contributions.*

(a) Retirees, surviving spouses, and surviving dependent children or their representative (collectively, "participants") shall pay monthly contributions as set by the trustee for their and their dependents' participation in TRS-Care [to cover the cost of optional plans].

~~[(b) Surviving spouses shall pay monthly contributions to cover the cost of insurance for the surviving spouse.]~~

~~[(c) Retirees and surviving spouses shall pay monthly contributions to cover the cost of insuring dependents.]~~

~~[(d) Surviving dependent children, or their representative, shall pay monthly contributions to cover the cost of insurance for the surviving dependent children.]~~

(b) ~~[(e)] To [In order to] be eligible for TRS-Care [optional] coverage, a participant [retiree, surviving spouse, or surviving dependent child, or his or her representative,] must authorize the trustee in writing to deduct [the deduction by the trustee of the amount of] the contribution amount [contributions] from the [their] annuity payment. After such authorization, the trustee may [shall] deduct the amount of the contribution [each month] from the annuity payment.~~

~~[(f) In order to pay for dependent coverage, the retiree or surviving spouse shall authorize in writing the deduction of the contribution payment from their annuity payment. After authorization by the retiree or surviving spouse, the trustee shall deduct the amount of the contribution each month from the retiree's or surviving spouse annuity payment.]~~

(c) ~~[(g)] If [In the event that] the amount of the contribution is more than the amount of the annuity payment, the participant will be billed directly by TRS or the TRS-Care administrator [the earrier] for the entire contribution amount.~~

(d) ~~[(h)] Failure to make any required contribution for coverage of a dependent or a surviving dependent child [non-retiree] will result in termination of coverage at the end of the month for which the last contribution was made.~~

(e) ~~[(i)] Failure to make any required contribution for coverage of a retiree or a surviving spouse enrolled in TRS-Care 2 or TRS-Care 3 [under an optional plan] will result in termination of coverage in TRS-Care 2 or TRS-Care 3, as applicable, [from the optional plan] and enrollment in TRS-Care 1, [the basic plan,] resulting in a decrease in coverage[.] at the end of the month for which the last contribution was made. The retiree or surviving spouse will not be able to change his or her TRS-Care coverage tier unless and until the retiree or surviving spouse has an additional enrollment opportunity as set out in §41.2 of this title (relating to Additional Enrollment Opportunity) or some other opportunity under Insurance Code, §1575.161.~~

~~[(j) Disability retirees shall be required to pay monthly contributions to cover the cost of coverage during periods when their annuity payments are suspended. Failure to make required contributions will result in a termination of coverage from the optional plan and enrollment in the basic plan, resulting in a decrease in coverage.]~~

*§41.6. Required Contribution [Contributions] from Public Schools.*

(a) On a monthly basis, each public school shall contribute 0.55% [0.4%] of the salary of each active employee to TRS for deposit in the Retired School Employees Group Insurance Fund. The public school shall make the contribution at the same time and in the

same manner in which the public school delivers retirement contributions. Any waiver granted to a public school under Government Code §825.408(a) does not apply to the contribution under this section.

(b) - (d) (No change.)

*§41.7. Effective Date of Coverage.*

(a) The following words and phrases, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

(1) Noncontributory coverage means [TRS-Care ] coverage under the health benefits program under the Texas Public School Retired Employees Group Benefits Act (TRS-Care) provided at no cost to eligible TRS retirees and surviving spouses.

(2) (No change.)

(b) For those TRS members who take a service or disability retirement before September 1, 2004, and who enroll or are enrolled in noncontributory coverage during their initial enrollment period as described in §41.1 of this chapter relating to Initial Enrollment Periods for the Health Benefits Program Under the Texas Public School Retired Employees Group Benefits Act [Program ] (TRS-Care), the effective date of such coverage is the first day of the month following the effective date of retirement unless the retiree has waived coverage in writing.

(c) Except as provided in subsection (i) of this section, this [This] subsection applies to the following TRS members: those who take a service or disability retirement after September 1, 2004, and enroll in noncontributory coverage during their initial enrollment period as described in §41.1 of this chapter and those who, regardless of their retirement date, enroll in contributory coverage during their initial enrollment period as described in §41.1. For such members, the effective date of coverage is:

(1) - (2) (No change.)

(d) - (h) (No change.)

(i) The effective date of coverage is the first day of the month following the receipt by TRS-Care of the enrollment application submitted by the retiree who:

(1) took a service retirement between September 1, 2004, and August 31, 2005, inclusive;

(2) was eligible at the time of retirement to enroll in TRS-Care pursuant to Insurance Code, §1575.004(a)(1)(B) as enacted by the Legislature in 2003;

(3) was required to pay the total cost of participation for the retiree and the retiree's dependents in TRS-Care; and

(4) enrolled during the 61-day period, from September 1, 2005, through October 31, 2005, inclusive, authorized under a Resolution Regarding Sixty-One Day Enrollment or Upgrade Opportunity in TRS-Care for Certain Service Retirees, approved by the TRS Board of Trustees on July 8, 2005.

~~[(i) The effective date of coverage for a retiree, a surviving spouse, and an eligible dependent who have a second initial enrollment period as described in §41.1 of this chapter relating to Enrollment Periods for the Texas Public School Retired Employees Group Benefits Program (TRS-Care) and who enroll during the time period prescribed by §41.1 is:]~~

~~[(1) the first day of the month following the date that the retiree or surviving spouse becomes eligible for TRS-Care under subsections (e)(1), (e)(2), or (e)(3) of §41.10 of this chapter relating to Eligibility to Enroll in the Texas Public School Retired Employees~~

Group Benefits Program if the application for coverage is received by TRS-Care on or before the date of eligibility for TRS-Care under subsections (c)(1), (c)(2), or (c)(3) of §41.10; or]

[(2) the first day of the month following the receipt of the application by TRS-Care if the application is received after the date on which the retiree or surviving spouse becomes eligible for TRS-Care under subsections (c)(1), (c)(2), or (c)(3) of §41.10 of this chapter but within the enrollment period.]

(j) - (q) (No change.)

§41.10. Eligibility to Enroll in the Health Benefits Program Under the Texas Public School Retired Employees Group Benefits Act [Program].

(a) If they meet the applicable requirements set out in this section, the following persons are eligible to enroll in the health benefits program under the Texas Public School Retired Employees Group Benefits Act [Program] (TRS-Care):

(1) - (4) (No change.)

(b) (No change.)

(c) To be eligible to enroll in TRS-Care under this section, a service retiree of TRS who retires after September 1, 2005 [2004] must meet the following requirements [of at least one of the following paragraphs]:

(1) at the time of retirement, a member[:]

[(A) is at least 65 years old; and]

[(B)] has at least 10 years of service credit in the system, which can include only the following types of service credit:

(A) [(i)] service credit for actual service in Texas public schools;

(B) [(ii)] service credit transferred to TRS from ERS;

(C) [(iii)] withdrawn service credit that the member has purchased and that has been credited to the member's account;

(D) [(iv)] service credit for unreported service that the member has purchased and that has been credited to the member's account;

(E) [(v)] service credit for substitute service that the member has purchased and that has been credited to the member's account;

(F) [(vi)] up to five years of military service credit or re-employed veteran's (USERRA) service credit that the member has purchased and that has been credited to the member's account; and

[(vii) any years of service credit that the member would have received but for the member's participation in the Deferred Retirement Option Program (DROP); or]

(2) at the time of retirement, a member either:

[(A) meets the requirements of paragraph (1)(B) of this subsection; and]

(A) [(B)] meets the [TRS-Care] Rule of 80, which is determined by having the sum of the individual's age and the amount of service credit in the retirement system, including all service credit purchased for equivalent or special service credit, [described in paragraph (1)(B) of this subsection] equal or exceed 80, regardless of whether the member had a reduction in the retirement annuity for early age retirement; or

(B) has 30 or more years of service credit in the retirement system, including all service credit purchased for equivalent or special service credit.

[(3) a member:]

[(A) purchased any of the following types of service credit:]

[(i) out-of-state service credit;]

[(ii) military service credit;]

[(iii) re-employed veteran's (USERRA) service credit:]

[(iv) developmental leave service credit;]

[(v) sick leave service credit;]

[(vi) service credit purchase; or]

[(vii) service credit for work experience by a certified career or technology teacher;]

[(B) had the service described in paragraph (3)(A) of this subsection credited by August 31, 2003;]

[(C) except as provided by subsection (f) of this section, at the time of retirement, has the sum of the following equal or exceed 80 (the "Grandfathered TRS-Care Rule of 80");]

[(i) age;]

[(ii) the service credit described in paragraph (3)(A) of this subsection;]

[(iii) service credit for actual service in Texas public schools;]

[(iv) service credit transferred to TRS from ERS;]

[(v) withdrawn service credit that the member has purchased and that has been credited to the member's account;]

[(vi) service credit for unreported service that the member has purchased and that has been credited to the member's account; and]

[(vii) service credit for substitute service that the member has purchased and that has been credited to the member's account;]

[(D) at the time of retirement, has at least 10 years of service credit in the system, which can include only the following types of service credit:]

[(i) service credit for actual service in Texas public schools;]

[(ii) service credit transferred to TRS from ERS;]

[(iii) withdrawn service credit that the member has purchased and that has been credited to the member's account;]

[(iv) service credit for unreported service that the member has purchased and that has been credited to the member's account;]

[(v) service credit for substitute service that the member has purchased and that has been credited to the member's account; and]

[(vi) up to five years of out-of-state service credit limited to that out-of-state service credit that was credited by August 31, 2003; and]

~~[(E) takes a normal age service retirement as determined under Government Code, Chapter 824, Subchapter C by August 31, 2009;]~~

~~[(4) a member;]~~

~~[(A) was employed in actual service in a Texas public school during or before the 2003-2004 school year; and]~~

~~[(B) at the time of retirement, has at least 10 years of service credit in TRS; which can include only the following types of service credit:]~~

~~[(i) service credit for actual service in Texas public schools;]~~

~~[(ii) service credit transferred to TRS from ERS;]~~

~~[(iii) withdrawn service credit that the member has purchased and that has been credited to the member's account;]~~

~~[(iv) service credit for unreported service that the member has purchased and that has been credited to the member's account; and]~~

~~[(v) service credit for substitute service that the member has purchased and that has been credited to the member's account;]~~

~~[(vi) up to five years of out-of-state service credit that the member has purchased and that has been credited to the member's account;]~~

(d) To be eligible to enroll in TRS-Care under this section, a service retiree of TRS who retires after September 1, 2004, but on or before August 31, 2005, must meet, on September 1, 2005, either of the following requirements:

(1) the 10-year service credit requirement of subsection (b) of this section; or

(2) the 10-year service credit requirement of subsection (c)(1) of this section and one of the requirements of subsection (c)(2) of this section.

(e) Any service retiree of TRS who is enrolled in TRS-Care on August 31, 2005, maintains eligibility for TRS-Care on or after September 1, 2005, unless and until an applicable rule or law prohibits continued enrollment in TRS-Care.

(f) [(d)] For purposes of this section, "public school" is an educational institution or organization in this state that is entitled by law to be supported in whole or in part by state, county, school district, or other municipal corporation funds.

~~[(e) Service retirees who are eligible to enroll in TRS-Care under only subsection (e)(4) of this section are required to pay the total cost of their participation in TRS-Care until the date that they first qualify for TRS-Care under subsection (e)(1); (e)(2); or (e)(3) of this section.]~~

~~[(f) Service retirees who meet all of the requirements of subsection (e)(3) of this section except the Grandfathered TRS-Care Rule of 80 in subsection (e)(3)(E) of this section at the time of retirement can become eligible to enroll in TRS-Care under subsection (e)(3) of this section after retirement only if they meet the Grandfathered TRS-Care Rule of 80 by August 31, 2009.]~~

~~(g) - (j) (No change.)~~

*§41.11. Years of Service Credit Used to Determine Premiums.*

~~(a) (No change.)~~

~~(b) To determine the applicable premium for a retiree, regardless of the retiree's effective date of retirement [those retirees who take a TRS retirement before September 1, 2004], TRS will use the retiree's years of service credit to which the retiree is entitled under the Chapter 823, Government Code, at the time of the TRS retirement.~~

~~[(c) To determine the applicable premium for those retirees who take a TRS retirement after September 1, 2004; TRS will use the retiree's years of service credit that can be considered in determining eligibility for TRS-Care benefits at the time of the TRS retirement.]~~

~~(c) [(d)] To determine the applicable premium for surviving spouses and divorced spouses who elect COBRA coverage, TRS will use the retiree's years of service credit as determined by [either] subsection (b) [or subsection (e)] of this section[; as applicable].~~

**This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.**

**Filed with the Office of the Secretary of State on October 17, 2005.**

**TRD-200504657**

**Ronnie G. Jung**

**Executive Director**

**Teacher Retirement System of Texas**

**Earliest possible date of adoption: December 4, 2005**

**For further information, please call: (512) 542-6438**

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# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## **TITLE 10. COMMUNITY DEVELOPMENT**

### **PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

#### **CHAPTER 80. MANUFACTURED HOUSING SUBCHAPTER G. STATEMENTS OF OWNERSHIP AND LOCATION**

##### **10 TAC §80.208**

The Texas Department of Housing and Community Affairs withdraws the proposed amendment to §80.208 which appeared in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4550).

Filed with the Office of the Secretary of State on October 24, 2005.

TRD-200504802

Timothy K. Irvine

Executive Director/Manufactured Housing Division of TDHCA

Texas Department of Housing and Community Affairs

Effective date: October 24, 2005

For further information, please call: (512) 475-2206



## **TITLE 19. EDUCATION**

### **PART 2. TEXAS EDUCATION AGENCY**

#### **CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING**

##### **SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING FINANCIAL ACCOUNTABILITY RATING SYSTEM**

##### **19 TAC §§109.1002 - 109.1005**

The Texas Education Agency withdraws the proposed amendments to §§109.1002 - 109.1005 which appeared in the May 13, 2005, issue of the *Texas Register* (30 TexReg 2818).

Filed with the Office of the Secretary of State on October 20, 2005.

TRD-200504743

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Effective date: October 20, 2005

For further information, please call: (512) 475-1497



## **TITLE 22. EXAMINING BOARDS**

### **PART 23. TEXAS REAL ESTATE COMMISSION**

#### **CHAPTER 535. GENERAL PROVISIONS SUBCHAPTER R. REAL ESTATE INSPECTORS**

##### **22 TAC §535.208, §535.209**

The Texas Real Estate Commission withdraws the emergency adoption of the amendments to §535.208 and new §535.209 which appeared in the September 2, 2005, issue of the *Texas Register* (30 TexReg 5115).

Filed with the Office of the Secretary of State on October 17, 2005.

TRD-200504652

Loretta DeHay

General Counsel

Texas Real Estate Commission

Effective date: October 17, 2005

For further information, please call: (512) 465-3900



## **TITLE 34. PUBLIC FINANCE**

### **PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS**

#### **CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS**

##### **SUBCHAPTER A. RETIREE HEALTH CARE BENEFITS (TRS-CARE)**

##### **34 TAC §41.5**

The Teacher Retirement System of Texas withdraws the proposed amendments to §41.5 which appeared in the April 22, 2005, issue of the *Texas Register* (30 TexReg 2379).

Filed with the Office of the Secretary of State on October 24, 2005.

TRD-200504806

Ronnie G. Jung

Executive Director

Teacher Retirement System of Texas

Effective date: October 24, 2005

For further information, please call: (512) 542-6438



## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

### **PART 3. TEXAS YOUTH COMMISSION**

#### **CHAPTER 85. ADMISSION, PLACEMENT, AND PROGRAM COMPLETION**

##### **SUBCHAPTER C. MOVEMENT WITHOUT PROGRAM COMPLETION**

###### **37 TAC §85.41**

The Texas Youth Commission withdraws the proposed amendments to §85.41 which appeared in the August 19, 2005, issue of the *Texas Register* (30 TexReg 4792).

Filed with the Office of the Secretary of State on October 19, 2005.

TRD-200504711

Linda Reyes, Ph.D.

Deputy Executive Director

Texas Youth Commission

Effective date: October 19, 2005

For further information, please call: (512) 424-6014



## **PART 13. TEXAS COMMISSION ON FIRE PROTECTION**

### **CHAPTER 439. EXAMINATIONS FOR CERTIFICATION**

#### **SUBCHAPTER A. EXAMINATIONS FOR ON-SITE DELIVERY TRAINING**

##### **37 TAC §439.3, §439.13**

The Texas Commission on Fire Protection withdraws the proposed amendments to §439.3 and §439.13 which appeared in the August 5, 2005, issue of the *Texas Register* (30 TexReg 4458).

Filed with the Office of the Secretary of State on October 19, 2005.

TRD-200504732

Gary L. Warren, Sr

Executive Director

Texas Commission on Fire Protection

Effective date: October 19, 2005

For further information, please call: (512) 239-4921



# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 7. BANKING AND SECURITIES

### PART 1. FINANCE COMMISSION OF TEXAS

#### CHAPTER 1. CONSUMER CREDIT REGULATION

##### SUBCHAPTER J. AUTHORIZED LENDER'S DUTIES AND AUTHORITY

###### 7 TAC §§1.830 - 1.832, 1.834

The Finance Commission of Texas (the commission) adopts amendments to §§1.830 - 1.832 and 1.834, concerning the duties and authority of authorized lenders. (Please note that the adopted repeal of §1.833 is being published elsewhere in the *Texas Register*.) The amendments are adopted with no changes to the proposal published in the September 2, 2005, issue of the *Texas Register* (30 TexReg 5125).

The purpose of the amendments is to modernize the recordkeeping rules for regulated lenders, so that the rules better accommodate the prevalence of automated recordkeeping systems used by the vast majority (over 95%) of licensees today. The rules have also been reorganized and streamlined, so that items to be contained together in one file (e.g., the borrower's account record) are listed in one place within the rules. To that end, the substantive language of §1.833 (which is being repealed separately) has been added to §§1.830 - 1.832.

The commission received no written comments on the proposal.

The amendments are adopted under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §342.551 authorizes the commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provisions (as currently in effect) affected by the adopted amendments are contained in Texas Finance Code, Chapter 342, Subchapter J.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 21, 2005.

TRD-200504759

Leslie L. Pettijohn  
Commissioner  
Finance Commission of Texas  
Effective date: November 10, 2005  
Proposal publication date: September 2, 2005  
For further information, please call: (512) 936-7640



###### 7 TAC §1.833

The Finance Commission of Texas (the commission) adopts the repeal of §1.833, concerning other required records. The commission has determined that the substance of §1.833 would more logically be included as part of §§1.830 - 1.832, concerning the recordkeeping requirements for authorized lenders. Adopted amendments elsewhere in the *Texas Register* will incorporate the old §1.833 within the other recordkeeping sections listed above. The repeal is adopted with no changes to the proposal published in the September 2, 2005, issue of the *Texas Register* (30 TexReg 5132).

The commission received no written comments on the proposal.

The repeal is adopted under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §342.551 authorizes the commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provisions (as currently in effect) affected by the adopted repeal are contained in Texas Finance Code, Chapter 342, Subchapter J.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 21, 2005.

TRD-200504760  
Leslie L. Pettijohn  
Commissioner  
Finance Commission of Texas  
Effective date: November 10, 2005  
Proposal publication date: September 2, 2005  
For further information, please call: (512) 936-7640



###### 7 TAC §1.848

The Finance Commission of Texas (the commission) adopts new §1.848, concerning the disclosure required when an automobile club membership is offered in connection with a loan. The pur-

pose of the new rule is to establish the disclosure as required under §342.457 of the Texas Finance Code, as enacted by the 79th Texas Legislature in HB 1088. The rule is adopted with no changes to the proposal published in the September 2, 2005, issue of the *Texas Register* (30 TexReg 5132).

The commission received no written comments on the proposal.

This new rule is adopted under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §342.551 authorizes the commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provisions (effective September 1, 2005) affected by the adopted new section are contained in Texas Finance Code, §303.203 and §342.457.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 21, 2005.

TRD-200504758

Leslie L. Pettijohn

Commissioner

Finance Commission of Texas

Effective date: November 10, 2005

Proposal publication date: September 2, 2005

For further information, please call: (512) 936-7640



## SUBCHAPTER Q. CHAPTER 342, PLAIN LANGUAGE CONTRACT PROVISIONS

### 7 TAC §§1.1251 - 1.1256

The Finance Commission of Texas (the commission) adopts new 7 TAC §§1.1251-1.1256 concerning required documents when loans under Chapter 342 or home equity loans regulated by the Office of Consumer Credit Commissioner have certain terms negotiated in Spanish. The new rules contained in 7 TAC §§1.1251-1.1256 outline applicability, the contract terms that constitute negotiation in Spanish, model forms, items not requiring translation, contracts with multiple creditors/debtors, and the status of the English language contract as the legal document. The new rules are adopted with changes to the proposal published in the September 2, 2005, issue of the *Texas Register* (30 TexReg 5133).

The purpose of these rules is to implement the amendments contained in subsection (a-1) to Texas Finance Code §341.502, as enacted by the 79th Texas Legislature in House Bill (HB) 1547. Section 341.502 requires contracts for consumer loans under Chapter 342 to be written in plain language. The amendments to the statute require that certain disclosures be provided in Spanish when the terms of an agreement for the specified loans are negotiated in Spanish. The rules provide model disclosure language that is designed to comply with the plain language requirements of §341.502. A creditor may receive certain legal benefits by using the prescribed model language; however, a creditor may choose to use its own Spanish disclosure. A creditor is not required to submit a Spanish disclosure for plain language review as contemplated in §341.502(c).

The commission received six (6) written comments on the rules as proposed from the following organizations: Black, Mann & Graham, LLP; CitiFinancial; Independent Bankers Association of Texas ("IBAT"); Middleberg, Riddle & Gianna; Pierson Patterson, LLP; and VMP Mortgage Solutions, Inc. Three of the commenters are not generally favorable or unfavorable, but rather offer particular suggestions or inquire about certain provisions. One commenter is generally unfavorable and argues that the disclosure should only be given in Spanish, not both English and Spanish. Two commenters are generally favorable, with one offering a particular change to §1.1256, and the other simply stating positive feedback on certain provisions and offering an opinion on applicability. As the latter comment of these two did not suggest any changes to the rules as proposed, the commission will address the other five comments under each applicable section.

Section 1.1251 clarifies the types of transactions that are covered by the provisions of the adopted rules. These rules only apply to closed-end transactions as the provisions of §341.502(a-1) require that the Spanish disclosure which must be delivered be identical to disclosures for a closed-end transaction under 12 C.F.R. §226.18. Section 341.502(a-1) also requires that the disclosure be given "if the terms of the agreement for a *loan* under Subsection (a) were negotiated in Spanish." Tex. Fin. Code Ann. §341.502(a-1) (2005) (emphasis added). Since the statutory language expressly limits the requirement to loans, retail installment transactions under Chapter 348, which are not loans, are not covered by §341.502(a-1) and the adopted rules. A creditor under Chapter 348 may choose to optionally comply with the adopted rules. Texas Finance Code, §§341.001(9) and 301.002 define a "loan" as an advance of cash as contrasted to Texas Finance Code, §348.007 which defines a retail installment transaction as a credit sale of a motor vehicle.

Comment: One commenter offers the following suggestion regarding §1.1251: "We recommend that §1.1251(a) be amended to read as follows: '(a) If a contract for loan under Chapter 342, Subchapters E, F, or G is negotiated in Spanish, then a licensee must deliver a disclosure to the debtor in Spanish *no later than consummation of the contract*.'"

This will clarify the timing of the Spanish disclosure to allow the licensee to provide the disclosure for transactions subject to Chapter 342, Subchapter G, at the same time as required for federal Truth In Lending disclosures under Sections 226.17(e) and 226.19(a)(2) of Regulation Z (12 C.F.R. Part 226)."

Response: The commission agrees with the suggested change and has incorporated it into the adopted rule.

Section 1.1252 details which contract terms, that when a creditor provides information about credit items in Spanish in relation to a credit transaction with a debtor or a debtor's representative, will constitute negotiation in Spanish, and hence require written disclosure in Spanish.

Comment: A commenter requests the following clarification on §1.1252: "We recommend this rule be clarified to explain when 'negotiation in Spanish' has occurred. If, for example, there are multiple debtors and one is fluent in English, then the requirements of these rules do not apply. If, for example, the debtor(s) use a personal translator, such as a friend or relative, and the licensee conducts the negotiations in English with that party, then the requirements of the rules do not apply. If, for example, the licensee personally conducts the negotiations with the debtor(s)

in Spanish, or through an interpreter associated directly or indirectly with the licensee, then the rules should apply."

Response: The commission disagrees with the first part of the comment, as the commission believes that the rule as proposed contains a clearer standard, with specific triggering events. However, the commission agrees with the second portion of this comment and has added the phrase "or the debtor's representative" to the rule for adoption.

Section 1.1253 outlines disclosure options, including figures containing model forms that may be utilized.

Comment: One commenter makes the following seven (7) suggestions as to the language contained in Figure 7 TAC §1.1253(a)(4):

"1. The English and Spanish language generally refers to the consumer/borrower with the first-person pronouns 'I' and 'me'. In the paragraph regarding Assumption, however, the English and Spanish refer to the consumer/borrower's home in the second-person. ('Someone buying your house. . .') and 'Alguien que compre su propiedad. . .') I believe this change in reference regarding the consumer/borrower may lead to unintended and unnecessary confusion for the consumer/borrower. Instead, I suggest the English and Spanish sentences utilize first person possessive pronouns in reference to the consumer/borrower as is done elsewhere in the form. Therefore, the paragraphs would begin 'Someone buying my house. . .') and 'Alguien que compre mi propiedad', respectively.

2. The Spanish paragraph regarding 'Assumption' is labeled 'Apropiación'. I would suggest that the proper translation for 'Assumption' is 'Asunción'. In my experience, 'apropiación' in real property law is equivalent to 'condemnation' or 'eminent domain', which is not the subject of the paragraph. Further, even in non-lawyer-speak Spanish, 'apropiación'-as does the verb to appropriate in English-implies a taking without justification or compensation. The use of the word 'Asunción' finds additional support in the English-Spanish Real Estate Glossary prepared by the Texas A & M University Real Estate Center. In that publication, 'Assumption' is translated as the verb 'asumir' or 'hacerse cargo', or the noun 'asunción'.

3. The form generally refers to the creditor/lender with the second-person pronoun 'you'. The Spanish translation of the word 'you' depends upon the context and the relationship between the parties to the conversation. If the parties are well-known to each other, then 'you' would be translated into the Spanish familiar 'tú'. If the parties are not well-known to each other or if the context is a formal one, law and business communications, then the Spanish formal 'Usted' is used. In certain places in the form, 'you' is translated 'Usted'. In others, when referring to the lender the familiar indirect object pronoun 'ti' is used. Referring to the creditor/lender in both the formal and familiar forms is not something a Spanish-speaker would normally do and detracts from the form's clarity of meaning. I would suggest, therefore, that the formal 'Usted' be utilized throughout. The affected sentence would then read, 'Puedo obtener seguro de propiedad de quien yo desee si es aceptable para Usted. Si obtengo el seguro de Usted, pagar? . . .'

4. Prepayment. I would recommend the consistent use of the phrase 'pagar por adelantado' for 'prepayment' rather than 'prepagó'. I would also suggest that 'prepayment penalty' is best translated 'castigo por pagar por adelantado' instead of 'cargo de penalización'.

5. It appears to me that the section on Prepayment is intended to read as two sentences depending upon the boxes marked. In the Spanish version one potential sentence is 'Si pago por adelantado podría pagar un castigo por pagar por adelantado.' 'Podría pagar' does not translate 'may have to pay' as accurately as 'tendría que pagar'. I would therefore suggest replacing the former with the latter.

6. In the 'Finance Charge' box on the front of the form the Spanish sentence reads 'La cantidad en dólares que me costara el crédito'. I believe an accent was missed as 'will cost' translates to 'costará'.

7. Finally, I would also suggest that in reference to credit life insurance and credit disability insurance the word 'Deudor' be uniformly capitalized."

Response: The commission agrees with all of the seven suggested changes above, save one, which is contained in the second sentence of number 4 regarding prepayment. The commission agrees with the first sentence. However, regarding the second sentence's suggestion, it is the commission's opinion that "pagar una penalización" is a better term than "castigo por pagar por adelantado." The commission has incorporated all of the offered changes, except for the second sentence of number 4, into Figure 7 TAC §1.1253(a)(4). For consistency, appropriate revisions have also been made to the other figures as well.

Comment: Another commenter asks the following questions:

"4. If the borrower chooses to obtain an Itemization of Amount Financed, does this document need to be in Spanish as well? If so, would the model form in Figure: 7 TAC 1.1253(a)(3)(B) be sufficient? . . .

7. Not all lenders offer credit life and credit disability insurance. Is this an "optional" section? . . .

9. The model form does not provide space for borrower name, account number, property address, type of loan, Lender's name and address, whether or not this is a preliminary or final disclosure, date of disclosure, or information regarding an adjustable rate loan. Would all of this information be acceptable to add to this form as long as the provisions of the model remain?"

Response: Regarding question 4, this issue is not addressed by the adopted rules. Creditors are advised to seek the advice of their own general counsels on this issue. Question 7 is addressed by §1.1253(b), which states in relevant part: "Creditors may delete inapplicable provisions of the disclosure." Regarding question 9, as stated in §1.1253(a)(1), the creditor may provide a complete translation of the contract form, whereas §1.1253(a)(2) - (a)(5) simply provide the basic minimum disclosures, as contained in the model forms. In other words, a creditor may include more information at its option. In addition, the model forms do not address variable rate disclosures, which at this time creditors are on their own to determine. However, variable rate disclosures may be a subject for future rulemaking by the commission.

Comment: One commenter has the following concern related to the disclosure under §1.1253: "My only concern with regard to the proposed disclosure is that it contains both an English version and Spanish version of the disclosure. I believe that the disclosure should only be in Spanish." The commenter refers to §226.27 (Language of Disclosures) of Regulation Z (12 C.F.R. Part 226) and continues by stating: "Section 226.27 of Regulation Z provides that the Truth in Lending Disclosure Statement (the 'Statement') may be provided in a language other than English and upon the consumer's request, the Statement may then



be provided in English. The Commentary to that section provides that should the initial Statement be provided in a language other than English, then subsequent disclosures may be made in English. This suggests that Regulation Z contemplates separate Statements should a Statement be offered in a language other than English."

Response: The commission disagrees with the commenter, as the first portion of the Commentary referenced by the commenter predominantly relates to open-end transactions. In contrast, these rules apply to closed-end transactions. Under §226.27, the second portion ("Permissible uses") of the Regulation Z Commentary offers strong support for the disclosure as proposed. In reference to providing the disclosure in English as well as Spanish, the §226.27 Commentary states: "If a creditor other than in Puerto Rico provides translations of the required disclosures—either because it is required to do so by state, federal, or local law, or because it chooses to do so—the translations are not inconsistent per se with the disclosures under this regulation, and they may be provided as additional information. In both cases, the English language disclosures required by this regulation must be clear and conspicuous . . . ."

Thus, the commission declines to adopt the commenter's suggestion and will maintain the English provisions within the model disclosure forms. The commission believes that this format is more appropriate for the closed-end transactions covered by these rules.

Section 1.1254 provides a list of items that do not require translation, such as names, addresses, brand names, and others.

Comment: The commission received the following inquiry related to §1.1254: "Do the open fields in the Spanish translation need to be completed in Spanish? For example, in the statement regarding property insurance, if the term was for 36 months, would 'months' need to be translated?"

Response: The answer is yes, "months" would need to be translated into Spanish. Also, the commission directs the commenter to §1.1254, which lists items that are excluded from the translation requirement.

Section 1.1255 discusses transactions with multiple creditors or multiple debtors and the methods for providing disclosure.

Comment: The commission received the following inquiry related to §1.1255: "The model form does not provide spaces for borrower's signatures. Does this form not need to be signed by the borrowers?"

Response: This question is addressed by §1.1255, which states in relevant part: "The information may, but need not be, signed by the borrower or creditor."

Section 1.1256 states that the English language contract is the legal document and provides creditors with an optional disclaimer (see comment discussed below) that may be added to the contract.

Comment: One commenter makes the following suggestion regarding §1.1256: "The proposed new 7 TAC sec. 1.1256 provides that the agreement entered in the English language is the legal document and determines the rights and obligations of the parties. [The commenter] agrees with the proposed rule, and recommends its enactment. [The commenter] would like to include a similar statement in the Spanish disclosure document, and suggests that the rule so provide. It is suggested that the

final rule provide that the lender may include the following statement in the Spanish disclosures subject to the rule.

#### SPANISH DISCLAIMER

AVISO CON RESPECTO A LA TRADUCCIÓN EN ESPAÑOL: Este documento en inglés es la versión oficial y refleja todo los derechos y obligaciones de las partes. La traducción en español de este documento es para la conveniencia del Prestatario.

NOTICE REGARDING THE TRANSLATION INTO SPANISH. The English document is the legal document and reflects the parties' rights and obligations. The translation into Spanish of the document is provided for the convenience of the Borrower."

Response: The commission agrees with the concept of this suggestion, but disagrees on some of the particular words used in the Spanish translation. Thus, the commission has incorporated this option into §1.1256, but has modified some of the Spanish wording to include the most accurate translation, as follows:

"AVISO CON RESPECTO A LA TRADUCCIÓN AL ESPAÑOL: El documento en inglés es el documento legal y refleja los derechos y obligaciones de las partes. La traducción al español del documento se ofrece para la conveniencia del Prestatario."

Comment: Another commenter requests the following addition to §1.1256: "We recommend that §1.1256 be amended to read as follows: 'The agreement entered in the English language is the legal document and determines the rights and obligations of the parties. *The disclosures required by federal law entered in the English language are the legal disclosures and determine the disclosure obligations of the licensee.*'"

Response: The commission agrees with the suggested revision, save the use of the term "licensee," and has added the commenter's second sentence to the adopted rule with the replacement term of "creditor" instead of "licensee."

Comment: A commenter poses the following change to be used throughout the rules:

"§§1.1251, 1.1252, 1.1253, 1.1254, and 1.1255.

We recommend that the term 'creditor' be changed to 'licensee' to conform to the requirement of §1.1251 and Texas Attorney General Opinion JC-0513 dated June 11, 2002."

Response: The commission disagrees with this suggestion and declines to modify the rule the terms as proposed. The term "licensee" is used under §1.1251 to show specific applicability to licensees. The use of the term "creditor" under the remaining sections is consistent with Regulation Z terminology. Creditor is a broader term that is more appropriate in these and other contexts (e.g. Truth in Lending), and allows non-licensees to have voluntary access to these rules. The commission believes that the terms as proposed are the most appropriate and accurate, do not require compliance beyond licenses, and declines to adopt this change.

Comment: In addition, a commenter asks the following practical questions:

"1. Can the format be altered as long as the provisions remain the same?

2. Is there a minimum font size requirement for this form?

3. The model form is 2 pages of letter size paper, can it be on 1 page of legal size paper? . . .

5. Under the 'My Payment Schedule will be' section, is it acceptable to add open fields to complete this information for the loan? If so, is there a limit to how many?"

Response: While the commission recognizes these practical issues with regard to the preparation and use of the model forms, these questions do not directly comment on and are not addressed by the adopted rules. These questions will likely be addressed by the agency in future rulemaking proposals.

In the proposed version of §§1.1251-1.1256, the commission stated that compliance with the proposed regulations would be deemed compliance with the statutory provisions under HB 1547. Due to comments received, the adopted model Spanish disclosures have been amended in all the figures accompanying 7 TAC §1.1253 to contain the most accurate translation (see above). Creditors or licensees who have complied in the interim by utilizing the forms as proposed may continue to use their existing stock of these forms for up to 90 days from the effective date of these rules.

These new sections are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §342.551 authorizes the Finance Commission to adopt rules for the enforcement of the consumer loan chapter.

These rules affect Texas Finance Code, Chapter 342, Subchapters E, F, and G.

*§1.1251. Applicability.*

(a) If a contract for loan under Chapter 342, Subchapters E, F, or G is negotiated in Spanish, then a licensee must deliver a disclosure to the debtor in Spanish no later than consummation of the contract.

(b) If a retail installment transaction under Chapter 348 is negotiated in Spanish, then a creditor may but is not required to deliver a disclosure specified in §1.1253 of this title to the debtor in Spanish.

(c) The disclosure requirement does not apply to open-end transactions.

*§1.1252. Negotiation in Spanish.*

(a) The disclosure specified in §1.1253 of this title must be given if a creditor provides information in relation to a credit transaction with a debtor or the debtor's representative regarding any of the following credit terms in Spanish:

- (1) amount financed;
- (2) finance charge;
- (3) annual percentage rate;
- (4) the amount of any payment or schedule of payments;
- (5) total of payments; or
- (6) security interest.

(b) Advertising exception. A creditor is not required to provide a disclosure specified in §1.1253 of this title if a creditor advertises credit terms in Spanish that are specified in this section.

*§1.1253. Form of Disclosure.*

(a) The creditor may at its option provide a debtor one of the following:

(1) a Spanish translation of the contract form that includes a Spanish translation of the disclosure form under 12 C.F.R. §226.18;

(2) for transactions subject to Chapter 342, Subchapter E, a copy of the "Notificación de Crédito Al Consumidor (Préstamo a Plazos)" as prescribed in Figure: 7 TAC §1.1253(a)(2);  
Figure: 7 TAC §1.1253(a)(2)

(3) for transactions subject to Chapter 342, Subchapter F:

(A) a copy of the "Notificación de Crédito Al Consumidor (Préstamo)," as prescribed in Figure: 7 TAC §1.1253(a)(3)(A), selecting the appropriate late charge payment option; and  
Figure: 7 TAC §1.1253(a)(3)(A)

(i) Late Charge Option 1: "Late Charge: If I don't pay an entire payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment."

(ii) Late Charge Option 1 Spanish Translation: "Cargos por Retrasos: Si no doy un pago completo dentro de 10 días después de vencerse, me puedes cobrar un cargo por retraso. El cargo por retraso será el 5% de la cantidad del pago."

(iii) Late Charge Option 2: "Late Charge: For a loan that has an amount financed of less than \$100, the late charge for a payment that is unpaid for 10 days after it is due is 5% of the amount of the installment. For a loan that has an amount financed of \$100 or more, the late charge for a payment that is unpaid for 10 days after it is due is the greater of \$10 or 5% of the amount of the installment."

(iv) Late Charge Option 2 Spanish Translation: "Cargos por Retrasos: Para un préstamo en el cual la cantidad financiada es menor de \$100, el cargo por retraso en un pago que no se liquida por 10 días después de vencerse es 5% de la cantidad del pago. Para un préstamo en el cual la cantidad financiada es de \$100 o más, el cargo por retraso en un pago que no se liquida por 10 días después de vencerse es de \$10 o 5% de la cantidad del pago atrasado, lo que sea mayor."

(B) a copy of the "Conceptos Financieros," as prescribed in Figure: 7 TAC §1.1253(a)(3)(B);  
Figure: 7 TAC §1.1253(a)(3)(B)

(4) for transactions subject to Chapter 342, Subchapter G, a copy of the "Notificación de Crédito Al Consumidor (Préstamo de Segunda Hipoteca)" as prescribed in Figure: 7 TAC §1.1253(a)(4); or  
Figure: 7 TAC §1.1253(a)(4)

(5) for transactions subject to Chapter 348, a copy of the "Notificación de Crédito Al Consumidor (Contrato de Menudeo a Plazos para Vehículo Automotor)" as prescribed in Figure: 7 TAC §1.1253(a)(5), selecting the appropriate late charge payment option.  
Figure: 7 TAC §1.1253(a)(5)

(b) Creditors may delete inapplicable provisions of the disclosure. Creditors may also delete any of the English portions of Figure: 7 TAC §1.1253(a)(4) or the lower portion of the disclosure below the payment schedule box of Figure 7 TAC §1.1253(a)(3)(A).

*§1.1254. Items Excluded from Translation Requirement.*

The summary or translation required under Texas Finance Code, §341.502(a-1) may retain the following elements in English without translation to Spanish:

- (1) names and titles of individuals, companies and other persons;
- (2) addresses;
- (3) brand names, trade names, trademarks, registered service marks, or full or abbreviated designations of the make and model of goods or services;

(4) alphanumeric codes, numerals, dollar amounts expressed in numerals, or dates; or

(5) words or expressions not having a generally-accepted Spanish translation.

*§1.1255. Multiple-Party Transactions.*

If there are multiple creditors in the transaction, only one creditor needs to provide the information required by §1.1253 of this title. If there are multiple debtors in a transaction, the creditor may deliver the information required by this section to any one or more of the debtors. The information may, but need not be, signed by the borrower or creditor.

*§1.1256. Legal Document.*

(a) The agreement entered in the English language is the legal document and determines the rights and obligations of the parties. The disclosures required by federal law entered in the English language are the legal disclosures and determine the disclosure obligations of the creditor.

(b) The creditor may at its option add the following disclaimer:

(1) "NOTICE REGARDING THE TRANSLATION INTO SPANISH: The English document is the legal document and reflects the parties' rights and obligations. The translation into Spanish of the document is provided for the convenience of the Borrower."

(2) Spanish Translation: "AVISO CON RESPECTO A LA TRADUCCIÓN AL ESPAÑOL: El documento en inglés es el documento legal y refleja los derechos y obligaciones de las partes. La traducción al español del documento se ofrece para la conveniencia del Prestatario."

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 21, 2005.

TRD-200504757

Leslie L. Pettijohn

Commissioner

Finance Commission of Texas

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For further information, please call: (512) 936-7640



## PART 2. TEXAS DEPARTMENT OF BANKING

### CHAPTER 25. PREPAID FUNERAL CONTRACTS

#### SUBCHAPTER B. REGULATION OF LICENSES

##### 7 TAC §25.23, §25.24

The Finance Commission of Texas (commission) adopts amendments to §25.23, concerning application and renewal fees, and §25.24, concerning examination fees. The amendments are adopted without changes to the proposed text as published in the September 2, 2005, issue of the *Texas Register* (30 Tex Reg 5135). The text will not be republished.

The adopted amendments to §25.23 and §25.24 require a person licensed to sell prepaid funeral benefit contracts under Finance Code, Chapter 154 (Chapter 154), to pay annual renewal and examination fees by ACH debit of the license holder's bank account initiated by the Texas Department of Banking (department).

The commission adopts the amendments to promote the department's operational efficiency in collecting annual renewal and examination fees. The ACH debit requirement will enable the department to streamline its operational procedures and thereby save administrative time and reduce administrative costs. In implementing the ACH debit requirement, the department will utilize the same procedures it has already developed and is using to collect annual fees and assessments through ACH debit from its other regulated industries, such as state banks, check sellers, and perpetual care cemeteries.

Before the department formally presented the proposed amendments to §25.23 and §25.24 to the commission for consideration for approval to publish for comment, the department distributed a draft of the amendments to its Chapter 154 license holders for informal, pre-proposal comment. The department received eight comments. Three commentors agreed with the concept of collection by department-initiated ACH debit, three requested options for payment in addition to the ACH process, and two objected because of concerns related to privacy and potential disputes regarding fee amounts. The department advised the commission that controls exist to protect license holders' privacy and ensure the debit of correct amounts, and, further, that the benefits to be derived from collection by ACH-debit will be eliminated or greatly reduced if the requirement does not apply to all license holders. The commission discussed the comments and department's response and approved the proposed amendments, as previously informally presented to Chapter 154 license holders, for publication for comment in the *Texas Register*. The commission received no comments in response to the published notice.

The adopted amendments implement Finance Code, §154.051(a)(1), which authorizes the commission to adopt reasonable rules to defray the costs of administering Chapter 154; Finance Code, §154.054, which directs the commission to establish examination fees in an amount sufficient to cover the costs of examination, the equitable or proportionate cost of maintaining and operating the department, and the cost of enforcing Chapter 154; and Finance Code, §154.108, which directs the commission to set the fee a prepaid funeral contract license holder must pay to renew its license.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Everette D. Jobe

Certifying Official

Texas Department of Banking

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For further information, please call: (512) 475-1300



## CHAPTER 33. MONEY SERVICES BUSINESSES

### 7 TAC §33.61

The Finance Commission of Texas (commission) adopts new §33.61, concerning the applicability of sale of checks and currency exchange rules, relating to the recently enacted Money Services Act. The new section is adopted without changes to the proposed text as published in the September 2, 2005, issue of the *Texas Register* (30 TexReg 5136). The text will not be republished.

During its 79th Regular Session, the Texas Legislature enacted the Money Services Act (Act of May 26, 2005, 79th Leg., R.S., H.B. 2218, §1), effective September 1, 2005. The Money Services Act ("MSA"), to be codified as Finance Code, Title 3, Subtitle E, Chapter 151, regulates persons that engage in money services businesses in Texas, specifically the businesses of money transmission and currency exchange. The MSA provides for the regulation of these businesses in one statute and repeals Finance Code, Chapter 152, the Sale of Checks Act, and Finance Code, Chapter 153, Currency Exchange, Transportation or Transmission, effective September 1, 2005.

Because of the enactment of the MSA, the commission will in time enact new regulations for money services businesses under the authority of the MSA. The new regulations, to be located in new Chapter 33, will replace existing Chapters 4 and 29 of this title concerning currency exchange and the Sale of Checks Act, respectively. These existing chapters will eventually be repealed.

Adopted new §33.61 is a transition section that provides and confirms that until the commission adopts regulations to implement the new MSA, the regulations contained in Chapters 4 and 29 of this title apply to a person engaged in the sale of checks, money transmission, or currency exchange business or in activities subject to the new MSA, to the extent applicable and not inconsistent with the new law.

The commission received no comments regarding the proposal.

The new section is adopted under Government Code, §2001.006, which authorizes a state agency to adopt rules in preparation for the implementation of legislation; Finance Code, §151.101, effective September 1, 2005, which authorizes the commission to adopt rules to administer and enforce Finance Code, Chapter 151; and H.B. 2218, Section 2(e), which authorizes the commission to adopt rules to provide for the orderly transition to the licensing and regulation of money services businesses under the Money Services Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Everette D. Jobe

Certifying Official

Texas Department of Banking

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## PART 4. TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

### CHAPTER 79. MISCELLANEOUS SUBCHAPTER C. HOLDING COMPANIES

#### 7 TAC §79.47

The Finance Commission of Texas ("Finance Commission") adopts new 7 TAC §79.47, Mutual Holding Companies. The new section is adopted to implement new Finance Code Chapter 97, Subchapter B, (*Finance Code* §97.051 et seq.) relating to the organization by a savings bank of a mutual holding company. The new rule establishes the procedural requirements and documents required to organize a mutual holding company. The new rule is adopted without changes to the proposed text as published in the September 2, 2005, issue of the *Texas Register* (30 TexReg 5137).

A savings bank may desire to reorganize to create a stock savings bank and a mutual holding company. For mutual savings banks, such a reorganization provides a mechanism to raise outside capital. New *Finance Code* Chapter 97, Subchapter B provides that a savings bank may organize a subsidiary stock savings bank and transfer the assets of the savings bank to the new subsidiary, thus converting the existing entity into a mutual holding company. In forming the new subsidiary the new rule provides that the articles of incorporation and bylaws of the new savings bank entity should contain the same provisions as those of any other state chartered savings bank. The new rule also provides that approval is conditioned upon approval of the holding company by the appropriate federal regulator.

The Finance Commission received no comments on the proposed new rule.

The new rule is adopted pursuant to *Finance Code* Section 11.302(a) which authorizes the Finance Commission to adopt rules applicable to savings associations and savings banks. The Finance Commission interprets this as authorizing adoption of rules to implement new *Finance Code* Chapter 97, Subchapter B, relating to the reorganization of a savings bank into a mutual holding company.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 24, 2005.

TRD-200504768

John Fleming

General Counsel

Texas Department of Savings and Mortgage Lending

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For further information, please call: (512) 475-1353

## CHAPTER 80. MORTGAGE BROKER AND LOAN OFFICER LICENSING

## SUBCHAPTER C. ADMINISTRATION AND RECORDS

### 7 TAC §80.14

The Finance Commission of Texas ("Finance Commission") adopts amendments to 7 TAC §80.14, Approval of Courses, by adding a new subsection (f). The purpose of the amendment is to more particularly define those courses which directly relate to residential mortgage lending. The proposal is intended to implement the provisions of SB 988 passed by the 79th Legislature. The amendment is adopted without changes to the proposed text as published in the September 2, 2005, issue of the *Texas Register* (30 TexReg 5139).

The Finance Commission received one comment from the Dallas Fort Worth Association of Mortgage Brokers. The commenter urged that the rule make the ethics course and a RESPA course mandatory. The rule as proposed includes those courses within the definition of courses related to residential mortgage lending, but does not mandate that either course is a required course to obtain renewal of a mortgage broker or loan officer license. While the Finance Commission concurs with the commenter on the importance of the ethics course and the RESPA course, nothing in SB 988 gives the agency authority to make the courses mandatory. Therefore, the Finance Commission declines to adopt the suggested modification.

The commenter also expressed concern that education providers are provided short lead time to develop and have these courses approved. The commenter did not make any recommendation as to how this should be addressed. While the Finance Commission understands the strain on providers caused by the implementation of the rule, the rule is necessary to implement statutory changes which became effective September 1, 2005. In addition, all of the courses included among the courses meeting the requirement of "relating to residential mortgage lending" were being offered by one or more providers prior to September 1, 2005. The Finance Commission believes that the need to have a rule to implement legislation which is now in effect outweighs any consideration to delay implementation of the rule.

The amended section is adopted under *Finance Code*, Section 11.306, which authorizes the Finance Commission to adopt mortgage broker rules as provided by Chapter 156 of the Act, and under *Finance Code*, Section 156.102(a) and (b), which authorizes the commissioner of the Texas Department of Savings and Mortgage Lending, subject to review and compliance with the directives of the Finance Commission, to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act. Authority for the section is also found in new *Finance Code*, Section 156.208(i). The Finance Commission interprets this section to require the Finance Commission to adopt a rule requiring that at least eight out of the required fifteen hours of continuing education courses be in courses relating to residential mortgage lending.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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John Fleming

General Counsel

Texas Department of Savings and Mortgage Lending

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For further information, please call: (512) 475-1353



## SUBCHAPTER J. FORMS

### 7 TAC §80.22

The Finance Commission of Texas ("Finance Commission") adopts amendments to 7 TAC §80.22, Loan Status Forms, which requires mortgage brokers and loan officers to provide certain information relating to the approval status of a mortgage loan application. The purpose of the amendment is to revise the existing rule to conform to the recently adopted rule for loan status forms used by mortgage bankers, 7 TAC §81.2. The Finance Commission believes that uniformity of practice in the origination of mortgage loans benefits consumers by providing information in a manner that is readily understandable and that includes sufficient information to keep the consumer and those with whom the consumer is transacting business reasonably informed as to the status of the loan approval process. The amendment is adopted without changes to the proposed text as published in the September 2, 2005, issue of the *Texas Register* (30 TexReg 5140).

The Finance Commission received one comment from an individual. The commenter suggested that the proposed changes to Form A, Conditional Qualification Letter, be amended to have a separate box to indicate whether or not the information received and reviewed for issuance of the Conditional Qualification Letter was received verbally or in writing. No reason was offered as to why this change should be made. The Finance Commission declines to make the suggested change. The Finance Commission is concerned that if a Conditional Qualification letter was issued on the basis of information received verbally, the issuer may later try to rescind on the basis of the receipt of written information subsequent to the issuance of the original letter. This introduces unnecessary uncertainty as to the "reliability" of the form into the market place and reduces the utility of the Conditional Qualification Letter. Further, the Finance Commission is seeking uniformity in the forms used by mortgage bankers and the ones used by mortgage brokers. Adopting the commenter's suggestion would result in a different form approved for mortgage brokers than the one approved for mortgage bankers.

The amended section is adopted under *Finance Code*, Section 11.306, which authorizes the Finance Commission to adopt mortgage broker rules as provided by Chapter 156 of the Act, and under *Finance Code*, Section 156.102(a) and (b), which authorizes the Commissioner of the Department of Savings and Mortgage Lending, subject to review and compliance with the directives of the Finance Commission, to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act. The Finance Commission also interprets *Finance Code* Section 156.105 to authorize the Finance Commission to adopt rules relating to the use of standard forms to represent that a loan applicant has been pre-approved or pre-qualified for a mortgage loan.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 24, 2005.

TRD-200504771

John Fleming

General Counsel

Texas Department of Savings and Mortgage Lending

Effective date: November 13, 2005

Proposal publication date: September 2, 2005

For further information, please call: (512) 475-1353



## PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

### CHAPTER 88. CONSUMER DEBT MANAGEMENT SERVICES

#### SUBCHAPTER A. REGISTRATION PROCEDURES

##### 7 TAC §§88.101 - 88.108

The Finance Commission of Texas (the commission) adopts new Chapter 88, Consumer Debt Management Services, §§88.101 - 88.108, concerning the registration of debt management services providers. The new rules are adopted with changes to the proposal published in the September 2, 2005, issue of the *Texas Register* (30 TexReg 5143). In addition to a change resulting from a comment received (see below), other technical corrections have been made to the language as proposed. A comment was received from Money Management International concerning one section of the proposed rules.

In general, the purpose of the new rules is to establish application and registration procedures as required under Subchapter C, Consumer Debt Management Services, contained in Chapter 394 of the Texas Finance Code, as enacted by the 79th Texas Legislature in Senate Bill (SB) 1112. The adopted rules provide definitions, procedures for filing an application for registration for a Consumer Debt Management Services Registration, processing procedures, procedures for amendments to pending applications, procedures for relocation of a registered provider, procedures for designating an inactive status, and the fees associated with the registration.

Section 88.101 defines a particular term.

Section 88.102 describes the procedure for filing a new application for a debt management services registration, including instructions regarding what forms to use, what information is necessary on the application, and what information must be filed with the application.

The commission received one comment on proposed §88.102. The comment relates to the loss payee clause in §88.102(b)(5)(B)(iii). The commenter suggests "deleting the language calling for the loss payee clause and simply requiring proof of insurance."

The commission disagrees with the commenter, as it is the commission's opinion that the statute requires a loss payee clause payable in favor of the State of Texas. However, the commission has revised the language in §88.102(b)(5)(B)(iii) to clarify the limited applicability of the rules to Texas residents who have suf-

fered losses due to debt management services provided, and by stating the insurance policies "must contain a loss payee clause or rider stating that any loss or claim arising out of an action which occurred within the scope of Texas Finance Code, Chapter 394 may be payable in favor of the State of Texas."

Section 88.103 outlines how an application for a debt management services registration is processed, including a description of when an application is complete as well as an explanation of what may occur if an applicant fails to complete an application. In addition, this section describes the hearings process that occurs if the applicant contests the denial of its application.

Section 88.104 requires each applicant, upon discovery of new or changed information, to supplement its application within 10 business days of discovery of the new or changed information.

Section 88.105 describes the procedures for relocating the registered provider location.

Section 88.106 outlines how a registered provider may change its debt management services registration from active to inactive status.

Section 88.107 sets out the fees for new registered providers, registration amendments, registration duplication, the cost of hearings, and annual assessments.

Section 88.108 describes how registration applications and notices are public records, citing the relevant provisions within the Texas Government Code.

In addition, the commission also received inquiries on how to register early, but these inquiries did not present any specific comment either positive or negative on the substance of the rules.

Compliance with these rules is optional prior to January 1, 2006. For those providers who choose to register prior to January 1, 2006, the requisite surety bond or insurance must be in place at the time of application. Providers under this chapter should apply for registration no later than January 1, 2006.

These new sections are adopted under Texas Finance Code §394.204, which authorizes the Finance Commission to adopt rules to establish procedures to facilitate the registration of and collection of fees from debt management services providers.

The statutory provisions (effective September 1, 2005) affected by the adopted new sections are contained in Texas Finance Code, Chapter 394, Subchapter C.

##### §88.101. Definition.

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 394, Subchapter C, have the same meanings as defined in Chapter 394. The following term, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise. Principal party--All adult individuals with a substantial relationship to the proposed debt management services business of the applicant. Individuals with a substantial relationship to the proposed debt management services business of the applicant include:

(1) corporate officers, to include the Chief Executive Officer or President, the Chief Financial Officer or Treasurer, and those with substantial responsibility for debt management services operations or compliance with the Finance Code;

(2) shareholders owning 10% or more of the outstanding voting stock; or

(3) owners, trustees, or governing persons of other organizational entities applying for registration under this chapter.

*§88.102. Filing of New Application.*

(a) An application for issuance of a new debt management services provider registration must be submitted as prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. Applications may be submitted electronically by Internet or e-mail, or by mail.

(b) The application shall include the following required forms and filings. All questions must be answered.

(1) Application for Registration of Debt Management Services Provider (ADM 76).

(A) A physical street address must be listed for the proposed address for the applicant's business address. If the address has not yet been determined, then the application must so state.

(B) The person responsible for the day-to-day operation of the applicant's proposed business location must be named.

(C) Authentication. An officer must authenticate the application.

(2) Application Questionnaire for Debt Management Services Provider (ADM 77). All applicable questions must be answered.

(3) Disclosure of Owners and Principal Parties of Debt Management Services Provider (ADM 78).

(A) A detailed description of the ownership interest of each officer, director, agent, or employee of the applicant must be provided. Any member of the immediate family of an officer, director, agent, or employee of the applicant, in a for-profit affiliate or subsidiary of the applicant or in any other for-profit business entity that provides services to the applicant or to a consumer in relation to the applicant's debt management business must also be provided.

(B) The section inquiring about owners requires an answer based upon the applicant's entity type. If an individual's interest in an entity is community property, then spouses with a community property interest must also be listed. If the business interest is owned by a married individual as separate property, then a statement authenticating that fact should be provided.

(i) Corporations. All shareholders holding 5% or more voting stock must be named. If a parent corporation is the sole or part owner of the proposed business, a narrative or diagram must be attached that describes each level of ownership and management. This narrative or diagram requires the listing of the names of all officers, directors, and stockholders owning 5% or more stock at each level.

(ii) Other organizations. The owners, trustees, or governing persons must be named.

(4) Statutory Agent Disclosure (ADM 13). The statutory agent is the person or entity to whom any legal notice may be delivered. The agent must list a Texas address for legal service. If the statutory agent is an individual, the address must be a residential address.

(5) Surety bond or insurance. An applicant must file with the commissioner:

(A) a Surety Bond in the prescribed form (ADM 79):

(i) At initial application:

(I) If the average daily balance of the provider's trust account serving Texas consumers over the six-month period preceding the issuance of the bond is less than \$50,000 or if the provider

does not have any trust account history for Texas consumers, then a \$50,000 bond is required.

(II) If the average daily balance of the provider's trust account serving Texas consumers over the six-month period preceding the issuance of the bond is \$50,000 or more, then a \$100,000 bond is required.

(ii) At annual renewal:

(I) If the average daily balance of the provider's trust account serving Texas consumers over the six-month period preceding the issuance of the bond is less than \$100,000, the bond amount must be equivalent to or exceed the average daily balance, but not be less than \$25,000.

(II) If the average daily balance of the provider's trust account serving Texas consumers over the six-month period preceding the issuance of the bond is \$100,000 or more, then a \$100,000 bond is required; or

(B) evidence that the applicant maintains an insurance policy in a form approved by the commissioner, meeting the requirements of Texas Finance Code, §394.206, and meeting the requirements of clauses (i) - (iii) of this subparagraph, as follows:

(i) a fidelity insurance policy, in the aggregate amount of \$100,000 that provides coverage for:

(I) employee dishonesty;

(II) depositor's forgery;

(III) computer fraud; and

(ii) a professional liability insurance policy in the aggregate amount of \$100,000.

(iii) The fidelity insurance policy and the professional insurance policy must cover losses sustained by a Texas resident that are attributable to a debt management service or a debt management services agreement. Both the fidelity insurance policy and the professional insurance policy must contain a loss payee clause or rider stating that any loss or claim arising out of an action which occurred within the scope of Texas Finance Code, Chapter 394 may be payable in favor of the State of Texas.

(6) Assumed name certificates. For any applicant that does business under an assumed name as that term is defined in Texas Business & Commerce Code, §36.02(7), the applicant must provide all assumed names used.

(7) Debt management services agreement. The applicant must provide a blank copy of the written debt management services agreement as described in Texas Finance Code, §394.209.

*§88.103. Processing of Application.*

(a) Initial review. The agency will respond to applications within 15 working days of receipt stating that the application is complete and accepted for filing or stating that the application is incomplete and specifying the information required for acceptance.

(b) Complete application. An application is complete when it:

(1) conforms to the rules and the commissioner's published instructions;

(2) all fees have been paid; and

(3) all requests for additional information have been satisfied.

(c) Failure to complete application. If a complete application has not been filed with the commissioner within 30 days after notice

of deficiency has been sent to the applicant, the application may be denied.

(d) **Hearing.** Whenever an application is denied, the applicant has 30 days from the date the application was denied to request in writing a hearing to contest the denial. This hearing shall be conducted pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, and §9.1 et seq. of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings), before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision.

(e) **Denial.** The commissioner shall inform the applicant in writing of the reasons for denial. Upon the final denial of an application, the annual fee will be refunded to applicant. The investigation fee will be forfeited.

(f) **Processing time.**

(1) The commissioner shall ordinarily approve or deny a registered provider application within a maximum of 60 days after the date of filing of a completed application.

(2) **Exceptions.** The commissioner may take more time where good cause exists, as defined by Government Code, §2005.004, for exceeding the established time period in paragraph (1) of this subsection.

#### *§88.104. Amendments to Pending Application.*

Upon discovery of new or changed information, each applicant must provide the commissioner with information supplemental to that contained in the applicant's original application documents and attachments. Any action, fact, or information that would require a materially different answer than that given in the original registered provider application and which relates to the qualifications for registration must be reported to the commissioner within 10 business days after the person has knowledge of the action, fact or information.

#### *§88.105. Relocation of Registered Provider Location.*

A registered provider may move the business office from the registered provider location to any other location by giving notice of intended relocation to the commissioner. The notice must include the present address of the registered provider location, the contemplated new address of the registered provider location, and the approximate date of relocation.

#### *§88.106. Designation of Inactive Status.*

A registered provider may cease operating under a debt management services provider registration and render the registration inactive by giving notice of the cessation of operations to the commissioner. Notification must be filed on the Registration Amendment Form for Debt Management Services Provider (ADM 80).

#### *§88.107. Fees.*

(a) **New registrations.** A \$250 investigation fee is assessed each time an application for a new registration under this chapter is filed and is non-refundable.

(b) **Registration amendment.** A fee of \$25 must be paid each time a registered provider seeks to amend a registration by changing the assumed name of the registered provider, inactivating an active registration, or relocating the registered provider location.

(c) **Registration duplicate.** The fee for a registration duplicate is \$10.

(d) **Costs of hearings.** The commissioner may assess the costs of an administrative appeal hearing afforded under §88.103 of this title

(relating to Processing of Application), including the cost of the administrative law judge, the court reporter, attorneys' fees, or investigative costs, if applicable.

(e) **Annual assessment.** An annual fixed fee of \$430 is required for each registered debt management services provider. The agency may provide a discount or credit to an assessment as necessary to appropriately allocate and recover the requisite costs of administration.

#### *§88.108. Applications and Notices as Public Records.*

Once a registration application or notice is filed with the Office of Consumer Credit Commissioner (OCCC), it becomes a "state record" under Government Code, §441.180(11), and "public information" under Government Code, §552.002. Under Government Code, §§441.190, 441.191 and 552.004, the original applications and notices must be preserved as "state records" and "public information" unless destroyed with the approval of the director and librarian of the State Archives and Library Commission under Government Code, §441.187. Under Government Code, §441.191, the OCCC may not return any original documents associated with a debt management services provider application or notice to the applicant or registered provider. An individual may request copies of a state record under the authority of the Government Code, Chapter 552.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 21, 2005.

TRD-200504761

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Effective date: November 10, 2005

Proposal publication date: September 2, 2005

For further information, please call: (512) 936-7640



## **SUBCHAPTER B. ANNUAL REQUIREMENTS**

### **7 TAC §88.201, §88.202**

The Finance Commission of Texas (the commission) adopts new Chapter 88, Consumer Debt Management Services §88.201 and §88.202, concerning the annual renewal procedures and annual report requirements of debt management services providers. Section 88.201 is adopted without changes to the proposal as published in the September 2, 2005, issue of the *Texas Register* (30 TexReg 5146). Section 88.202 is adopted with changes to the proposal as published.

In general, the purpose of the new rules is to establish application and registration procedures as required under Subchapter C, Consumer Debt Management Services, contained in Chapter 394 of the Texas Finance Code, as enacted by the 79th Texas Legislature in Senate Bill (SB) 1112. The adopted rules provide annual renewal procedures and annual report requirements.

Section 88.201 describes the procedures for annual renewal. The first annual renewal period will occur in January 2007.

Section 88.202 outlines the requirement of annual reports for registered debt management services providers, and what information must be included in the annual reports. The first annual report submission will occur in 2007.



The commission received no written comments on the proposal.

The new sections are adopted under Texas Finance Code, §394.204, which authorizes the Finance Commission to adopt rules to establish procedures to facilitate the registration of and collection of fees from debt management services providers.

The statutory provisions (effective September 1, 2005) affected by the adopted new sections are contained in Texas Finance Code, Chapter 394, Subchapter C.

§88.202. *Annual Report.*

(a) Each authorized debt management services provider must file an annual report under this section on forms prescribed by the commissioner and must comply with all instructions from the commissioner relating to submitting the report.

(b) Each year, at the time of annual renewal, an authorized debt management services provider must file with the commissioner, in a form prescribed by the commissioner, a report that contains the following:

(1) the information required by Texas Finance Code, §394.205; and

(2) a list of all owners and principal parties, including any change in ownership that occurred during the preceding calendar year.

(c) Upon request by the commissioner, the applicant must provide any other information the commissioner deems relevant concerning the provider's business and operations during the preceding calendar year for the registered location of the provider in this state where business is conducted under this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 21, 2005.

TRD-200504762

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

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For further information, please call: (512) 936-7640



## TITLE 10. COMMUNITY DEVELOPMENT

### PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

#### CHAPTER 1. ADMINISTRATION

#### SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

##### 10 TAC §1.9

The Texas Department of Housing and Community Affairs (the Department) adopts, with changes, the new §1.9, concerning the Qualified Contract Policy, as published in the June 10, 2005, issue of the *Texas Register* (30 TexReg 3388).

This section is adopted, with changes, in order to implement a procedure for administering requests for qualified contracts.

The scope of the public comment concerning the Qualified Contract Policy pertains to the following sections:

SUMMARY OF COMMENT RECEIVED UPON PUBLICATION OF THE PROPOSED RULES IN THE TEXAS REGISTER AND COMMENTS PROVIDED AT PUBLIC HEARINGS HELD BY THE DEPARTMENT ON ITEMS THAT RELATE DIRECTLY TO THE QUALIFIED CONTRACT POLICY.

On June 10, 2005, the proposed Qualified Contract Policy was published in the *Texas Register*. In addition to publishing the document in the *Texas Register*, a copy of the proposed Qualified Contract Policy was published on the Department's web site and made available to the public upon request. The Department held one public hearing in Austin on July 5, 2005 to gather feedback on the proposed Qualified Contract Policy. The comments and responses are divided into the following two sections.

#### I. Substantive Comments and Department Response.

#### II. Administrative Clarifications and Corrections.

##### I. Substantive Comments and Department Response

##### §1.9(d)(1)(B) - Preliminary Qualified Contract Request

Comment: Hettig Kahn recommends clarifying that the owner is eligible to proceed with a preliminary qualified contract request if a right of first refusal has already been offered.

Department Response: Staff recommends a change to this subparagraph.

Board Response: Department's Response accepted.

##### §1.9(e)(1)(B)(i) and (iii) - Right of First Refusal

Comment: Bullmore and Partners, LLC requests clarification regarding the criteria used in approving a Community Housing Development Organization (CHDO), Qualified Nonprofit Organization and Tenant Organization as a purchaser with a right of first refusal.

Department Response: Staff does not recommend change to the current language. To provide flexibility in the review process, staff believes it is not necessary to describe the approval process in this rule. Staff intends to generally refer to the Department's existing CHDO approval process when approving CHDOs. Staff also intends to use the standard described in the definition of "Qualified Purchaser" unless there is a compelling argument for a waiver (i.e. an individual tenant in a single family building).

Board Response: Department's Response accepted.

##### §1.9(e)(3) - Right of First Refusal

Comment: Hettig Kahn suggests that a qualified contract can be requested 18 months into the 24-month right of first refusal process. Therefore, for 6 months the property would simultaneously be offered for sale pursuant to the qualified contract policy and the right of first refusal process.

Department Response: Staff concurs with the recommendation. The entire process if a property is offered for sale pursuant to both the qualified contract and right of first refusal would be shortened from 36 months to 30 months. However, the Department would still have 6 months to exclusively offer the property at the qualified contract price if a purchaser for the right of first refusal is not located. Staff would like to note that the one year period for the qualified contract process can only begin once the owner

and Department have agreed to the QC Price in writing. Staff recommends an addition to this paragraph.

Board Response: Department's Response accepted.

#### §1.9(f)(1)(O) - Processing Fee

Comment: Bullmore and Partners, LLC suggests that the Department charge a fixed fee instead of a fee calculated as a percentage of the total qualified contract price.

Department Response: Prior to drafting the policy, staff researched the processing fees of other states. While some of the researched states charge a .25% fee, most charge a fixed fee. Initially, staff felt that an unfair barrier would be created for smaller developments if a fixed fee was established. However, staff concurs that the .25% fee may be excessive for larger developments. Therefore, staff suggests charging a non-refundable processing fee in an amount equal to the lesser of \$3,000.00 or one fourth of one percent of the QC Price determined by the CPA. The proposed fixed fee is in line with the fixed fee charged by the researched states. Staff recommends change to this subparagraph.

Board Response: Department's Response accepted.

#### §1.9(f)(1) -Third Party Reports

Comment: Bullmore and Partners, LLC suggests that the Department consider requiring a monetary deposit for anticipated third party costs.

Department Response: Staff does not recommend change to the current language. The Department is proposing that all third party reports be initiated by the owner. A qualified contract request will not be accepted until all third party reports are received. Additionally, it is clear that if the Department must engage a CPA to perform a qualified contract price calculation or a third party to market the property, the cost of such services will be paid for by the owner.

Board Response: Department's Response accepted.

#### §1.9(f)(2) - Marketing of Property

Comment: Bullmore and Partners, LLC suggests that the most efficient means to expose the properties to potential purchasers is by contracting with brokerage firms that have experience and specialize in multifamily properties. The Department should require owners to list their property with such brokerage firms.

Department Response: Staff does not recommend change to the current language. It is clear that an owner must contract with a broker who is approved by the Department. The Department anticipates administering an RFQ process, similar to that used to approve market analysts, to approve experienced brokerage firms to market and sell the property.

Board Response: Department's Response accepted.

#### §1.9(h) - Appeal of Qualified Contract Price

Comment: Bullmore and Partners, LLC questions if the time the Department spends challenging the CPA's calculation of the Qualified Contract Price (QC Price) would count against the Owner's One Year Period (1YP).

Department Response: Staff does not recommend change to the current language. Staff believes the current language is explicit that the 1YP will not begin until the Department and owner have agreed to the QC Price in writing.

Board Response: Department's Response accepted.

#### I. Administrative Clarifications and Corrections §1.9(c) - Eligibility

Staff recommends an administrative change to this subsection to clarify that the extended use period may not be terminated for a tax credit development that was allocated credits on or after January 1, 2002 upon the presentment of a qualified contract as determined by the Department's counsel.

Board Response: Department's Response accepted.

#### §1.9(e)(1)(D) - Right of First Refusal

Staff recommends an administrative change to clarify that an owner whose right of first refusal to a specific organization was previously approved by the Department would be exempt from this requirement.

Board Response: Department's Response accepted.

The new section is adopted pursuant to the authority of the Texas Government Code, Chapter 2306.

#### §1.9. *Qualified Contract Policy.*

(a) Purpose. Pursuant to §42(h)(6) of the Internal Revenue Code, after the end of the 14th year of the compliance period, the owner of a development utilizing housing tax credits can request that the allocating agency find a buyer at the qualified contract price. If a buyer can not be located within one year, the extended use commitment will expire. This rule provides the procedures for the submittal and review of the qualified contract requests.

(b) Definitions. Many of the terms used in this section are defined in the Department's Housing Tax Credit Program Qualified Allocation Plan and Rules, known as the "QAP". Those terms that are not defined in the QAP or which may have another meaning when used in this section shall have the meaning set forth in this subsection unless the context clearly indicates otherwise.

(1) Code--The Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued thereunder by the United States Department of Treasury or the Internal Revenue Service.

(2) Compliance Period--With respect to a building, the period of 15 taxable years, beginning with the first taxable year of the credit period pursuant to the Code, §42(i)(1).

(3) Department--The Texas Department of Housing and Community Affairs.

(4) Extended Use Period--The period beginning with the first day of the Compliance Period and ending on the date which is 15 years after the end of the Initial Affordability Period.

(5) Initial Affordability Period--The Compliance Period or such longer period as shall have been elected by the owner as the minimum period for which units in the development shall be retained for low-income tenants and rent restricted, as set forth in the LURA.

(6) Land Use Restriction Agreement (LURA)--An agreement between the Department and the owner which is binding upon the owner's successors in interest, that maintains the affordability of a development pursuant to the requirements of Chapter 2306, Texas Government Code, and the requirements of the Code, §42.

(7) One Year Period (1YP)--Period commencing on the date on which the Department and the owner agree to the Qualified Contract price in writing and lasting twelve calendar months.

(8) Qualified Contract (QC)--A bona fide contract to acquire the non-low-income portion of the building for fair market value

and the low-income portion of the building for an amount not less than the applicable fraction (specified in the LURA) of the calculation as defined within §42(h)(6)(F) of the Code.

(9) Qualified Contract Price (QC Price)--Calculated purchase price of the development as defined within §42(h)(6)(F) of the Code and as further delineated in subsection (g) hereof.

(10) Qualified Contract Request (Request)--A request containing all information and items required by the Department.

(11) Qualified Purchaser--Proposed purchaser of the development who meets all eligibility and qualification standards stated in the QAP of the year the request is received. The purchaser must also attend, or assign another individual to attend, the Department's Property Compliance Training.

(c) Eligibility. An owner may submit a Qualified Contract Request at any time after the end of the year preceding the last year of the Initial Affordability Period, following the Department's determination that the owner is eligible, as hereinafter provided in subsection (f). The Initial Affordability Period starts concurrently with the credit period; therefore, beginning at placement in service or deferred until the beginning of the next tax year, if there is an election. Unless the owner has elected an Initial Affordability Period longer than the Compliance Period, this can commence at any time after the end of the 14th year of the Compliance Period. References in this section to actions which can occur after the 14th year of the Compliance Period shall refer, as applicable, to the year preceding the last year of the Initial Affordability Period, if the owner shall have elected an Initial Affordability Period longer than the Compliance Period.

(1) If there are multiple buildings placed in service in different years, the end of the Initial Affordability Period will be based upon the date the last building placed in service. For example, if five buildings in the development began their credit periods in 1990 and one began in 1991, the 15th year would be 2005.

(2) If a development received an allocation in multiple years, the end of the Initial Affordability Period will be based upon the last year of a multiple allocation. For example, if a development received its first allocation in 1990 and a subsequent allocation and began the credit period in 1992, the 15th year would be 2006.

(3) Owners who received an allocation of credits on or after January 1, 2002 are not eligible to request a qualified contract.

(d) Preliminary Qualified Contract Request. An owner must file a preliminary Qualified Contract Request (Pre-request) any time after the end of the year preceding the last year of the Initial Affordability Period.

(1) In addition to determining the basic eligibility described in subsection (c), the Pre-request will be used to determine the following:

(A) the property does not have any outstanding instances of noncompliance, with the exception of the physical condition of the property;

(B) there is a right of first refusal connected to the property that has not been offered to the Department;

(C) the Compliance Period has not been extended in the LURA; and

(D) the owner has all of the necessary documentation to submit a Request.

(2) In order to assess the validity of the pre-request, the Owner must submit:

(A) Preliminary Request Form;

(B) \$250 nonrefundable processing fee;

(C) copy of recorded LURA;

(D) first year's 8609s for all buildings showing Part II completed;

(E) documentation from original application regarding right of first refusal, if applicable; and

(F) local code compliance report within the last 12 months or HUD-certified UPCS inspection.

(3) The Pre-request will not bind the owner to submit a Request and does not start the IYP. A review of the pre-request will be conducted by the Department within 90 days of receipt of all documents described in paragraph (2). If the Department determines that this stage is satisfied, a letter will be sent to the owner stating that they are eligible to submit a Request.

(e) Right of First Refusal. If the owner elected at the time of application to provide a right of first refusal, all requests for right of first refusal submitted to Department, regardless of existing regulations, must adhere to this process.

(1) If at any time following the end of the Compliance Period or Initial Affordability Period, as applicable, the owner shall determine to sell the development and the owner has agreed to provide a right of first refusal to purchase the property for the minimum purchase price provided in, and in accordance with the requirements of, §42(i)(7)(B) of the Code (the "Minimum Purchase Price"), to a Qualified Nonprofit Organization, the Department, or either an individual tenant with respect to a single family building, or a tenant cooperative, a resident management corporation in the Development or other association of tenants in the Development with respect to multifamily developments (together, in all such cases, including the tenants of a single family building, a "Tenant Organization"), the right of first refusal shall be subject to the following terms.

(A) Upon the earlier to occur of:

(i) the owner's determination to sell the Development, or

(ii) the owner's request to the Department, pursuant to §42(h)(6)(H) of the Code, to find a buyer who will purchase the Development pursuant to a "qualified contract" within the meaning of §42(h)(6)(F) of the Code, the owner shall provide a notice of intent to sell the Development ("Notice of Intent") to the Department and to such other parties as the Department may direct at that time. If the owner determines that it will sell the Development at the end of the Compliance Period or Initial Affordability Period, as applicable, the Notice of Intent shall be given no later than two years prior to expiration of the Compliance Period or Initial Affordability Period, as applicable. If the owner determines that it will sell the Development at some point later than the end of the Compliance Period, the Notice of Intent shall be given no later than two years prior to date upon which the owner intends to sell the Development. If the Development is already within two years of the expiration of the Compliance Period or Initial Affordability Period, as applicable, and the owner intends to sell the Development at the end of the Compliance Period or Initial Affordability Period, as applicable, the two year period referenced in subparagraph (B) will begin when the owner files a Notice of Intent.

(B) During the two years following the giving of Notice of Intent, the Sponsor may enter into an agreement to sell the Development only in accordance with a right of first refusal for sale at the

Minimum Purchase Price with parties in the following order of priority:

(i) during the first six-month period after the Notice of Intent, only with a Qualified Nonprofit Organization that is also a community housing development organization, as defined for purposes of the federal HOME Investment Partnerships Program at 24 C.F.R. § 92.1 (a "CHDO") and is approved by the Department,

(ii) during the second six-month period after the Notice of Intent, only with a Qualified Nonprofit Organization or a Tenant Organization; and

(iii) during the second year after the Notice of Intent, only with the Department or with a Qualified Nonprofit Organization approved by the Department or a Tenant Organization approved by the Department.

(iv) If, during such two-year period, the owner shall receive an offer to purchase the Development at the Minimum Purchase Price from one of the organizations designated in clauses (i) through (iii) of this subparagraph (within the period(s) appropriate to such organization), the owner shall sell the Development at the Minimum Purchase Price to such organization. If, during such period, the owner shall receive more than one offer to purchase the Development at the Minimum Purchase Price from one or more of the organizations designated in clauses (i) through (iii) of this subparagraph (within the period(s) appropriate to such organizations), the owner shall sell the Development at the Minimum Purchase Price to whichever of such organizations it shall choose.

(C) After whichever occurs the later of:

(i) the end of the Compliance Period or Initial Affordability Period, as applicable, or,

(ii) two years from delivery of a Notice of Intent, the owner may sell the Development without regard to any right of first refusal established by the LURA if no offer to purchase the Development at or above the Minimum Purchase Price has been made by a Qualified Nonprofit Organization, a Tenant Organization or the Department, or a period of 120 days has expired from the date of acceptance of all such offers as shall have been received without the sale having occurred, provided that the failure(s) to close within any such 120-day period shall not have been caused by the owner or matters related to the title for the Development.

(D) At any time prior to the giving of the Notice of Intent, the owner may enter into an agreement with one or more specific Qualified Nonprofit Organizations and/or Tenant Organizations to provide a right of first refusal to purchase the Development for the Minimum Purchase Price, but any such agreement shall only permit purchase of the Development by such organization in accordance with and subject to the priorities set forth in subparagraph (B) of this paragraph unless prior approval was granted by the Department.

(E) The Department shall, at the request of the owner, identify in the LURA a Qualified Nonprofit Organization or Tenant Organization which shall hold a limited priority in exercising a right of first refusal to purchase the Development at the Minimum Purchase Price, in accordance with and subject to the priorities set forth in subparagraph (B) of this paragraph.

(F) The Department shall have the right to enforce the owner's obligation to sell the Development as herein contemplated by obtaining a power-of-attorney from the owner to execute such a sale or by obtaining an order for specific performance of such obligation or by such other means or remedy as shall be, in the Department's discretion, appropriate.

(2) The owner must submit evidence of the calculation of the Minimum Purchase Price with the Notice of Intent.

(3) The IYP for the Qualified Contract process will begin 18 months after the right of first refusal process has commenced if the owner and the Department have agreed to the QC Price in writing.

(f) Qualified Contract Request. An owner may file a Qualified Contract Request (Request) anytime after approval that the owner is eligible to submit a Request has been received in writing from the Department.

(1) The following documentation that must be submitted with a Request:

(A) A completed application and certification.

(B) The qualified contract price calculation worksheets completed by a third party certified public accountant (CPA). The CPA shall certify that they have reviewed annual partnership tax returns for all years of operation, loan documents for all secured debt, and partnership agreements. They shall also certify that they are not being compensated for the assignment based upon a predetermined outcome.

(C) A thorough description of the Development, including all amenities.

(D) A description of all income, rental and other restrictions, if any, applicable to the operation of the Development.

(E) A current title report.

(F) A current appraisal consistent with 10 TAC §1.34.

(G) A current Phase I Environmental Site Assessment (Phase II if necessary) consistent with 10 TAC §1.35.

(H) A current property condition assessment consistent with 10 TAC §1.36.

(I) A copy of the monthly operating statements for the Development for the most recent 12 consecutive months.

(J) The three most recent consecutive annual operating statements.

(K) A detailed set of photographs of the development, including interior and exterior of representative units and buildings, and the property's grounds (including digital photographs that may be easily displayed on the Department's website).

(L) A current and complete rent roll for the entire property.

(M) A certification that all tenants in the Development have been notified in writing of the request for a Qualified Contract. A copy of the letter used for the notification must also be included.

(N) If any portion of the land or improvements is leased, copies of the leases.

(O) Non-refundable processing fee of \$3,000.00.

(P) Additional information deemed necessary by the Department.

(2) Unless otherwise directed by the Department pursuant to subsection (i), the owner shall contract with a broker approved by the Department to market and sell the property. The fee for this service will be paid by the seller, not to exceed 6% of the QC Price.

(3) Within 90 days of the submission of a complete Request, the Department will notify the owner in writing of the acceptance or rejection of the owner's QC Price calculation. The Department will have one year from the date of the acceptance letter to find a Qual-

ified Purchaser and present a Qualified Contract. The Department's rejection of the owner's QC Price calculation will be processed in accordance with subsection (h) and the IYP will commence as provided therein.

(g) **Determination of Qualified Contract Price.** The CPA contracted by the owner will determine the QC Price in accordance with §42(h)(6)(F) of the Code and the following guidelines.

(1) Distributions to the owner include any and all cash flowing to the owner, including incentive management fees and reserve balance distributions or future anticipated distributions, but excluding payments of any eligible deferred developer fee. These distributions can only be confirmed by a review of all prior year tax returns for the development.

(2) All equity contributions will be adjusted based upon the lesser of the consumer price index or five percent (5%) for each year, from the end of the year of the contribution to the end of year 14 or the end of the year of the request for a Qualified Contract Price if requested at the end of the year or the year prior if the request is made earlier than the last year of the month.

(3) These guidelines are subject to change based upon future IRS Rulings and/or guidance on the determination of owner distributions, equity contributions and/or any other element of the QC Price.

(4) The QC Price calculation is not the same as the Minimum Purchase Price calculation for the right of first refusal.

(h) **Appeal of Qualified Contract Price.** The Department reserves the right, at any time, to request additional information to document the QC Price calculation or other information submitted. If the documentation does not support the price indicated by the CPA hired by the owner, the Department may engage its own CPA to perform a QC Price calculation. Cost of such service will be paid for by the owner. If an owner disagrees with the QC Price calculated by the Department, an owner may appeal in writing. A meeting will be arranged with representatives of the owner, the Department and the CPA contracted by the Department to attempt to resolve the discrepancy. The IYP will not begin until the Department and owner have agreed to the QC Price in writing.

(i) **Marketing of Property.**

(1) By submitting a Request, the owner grants the Department the authority to market the development and provide development information to interested parties. Development information will consist of pictures of the development, location, amenities, number of units, age of building, etc. Owner contact information will also be provided to interested parties. The owner is responsible for providing staff to assist with site visits and inspections. Marketing of the development will continue until such time that a Qualified Contract is presented or the IYP has expired.

(2) Notwithstanding subsection (f)(2), the Department reserves the right to contract directly with a third party in marketing the development. Cost of such service, including a broker's fee not to exceed 6%, will be paid for by the existing owner.

(3) The Department must have continuous cooperation from the owner. Lack of cooperation will cause the process to cease and the owner will be required to comply with requirements of the LURA for the remainder of the Extended Use Period. Responsibilities of the owner include but are not limited to:

(A) allowing access to the property and tenant files;

(B) keeping the Department informed of potential purchasers; and

(C) notifying the Department of any offers to purchase.

(4) A prospective purchaser must complete all exhibits required for an ownership transfer request. The Department will then assess if the prospective purchaser is a Qualified Purchaser.

(j) **Presentation of a Qualified Contract.**

(1) If the Department finds a Qualified Purchaser willing to present an offer to purchase the property for an amount at the QC Price, the owner must agree to enter into a commercially reasonable form of earnest money agreement or other contract of sale for the property and provide a reasonable time for necessary due diligence and closing of the purchase.

(2) Although the owner is obligated to sell the development for the QC Price pursuant to a Qualified Contract, the consummation of such a sale is not required for the LURA to continue to bind the development for the remainder of the extended use period. Once the Department presents a Qualified Contract to the owner, the possibility of terminating the extended use period is removed forever and the property remains bound by the provisions of the LURA.

(3) The Department will attempt to procure a QC for the acquisition of the low income portion of any project only once during the extended use period.

(4) If the transaction closes under the contract, the new owner will be required to fulfill the requirements of the LURA for the remainder of the extended use period.

(5) If the Department fails to present a QC before the end of the IYP, the Department will file a release of the LURA and the development will no longer be restricted to low-income requirements and compliance. However, in accordance with §42(h)(6)(E)(ii) of the Code, for a three-year period commencing on the termination of the extended use period, the owner may not evict or displace tenants of low-income units for reasons other than good cause and will not be permitted to increase rents beyond the maximum tax credit rents. Additionally, the owner should submit evidence, in the form of a signed certification and a copy of the letter to be created by the Department, that the tenants in the Development have been notified in writing that the LURA has been terminated and have been informed of their protections during the three-year time frame.

(6) Prior to the Department filing a release of the LURA, the owner must correct all instances of noncompliance with the physical condition of the property.

(k) **Compliance Monitoring during Extended Use Period.** For developments that continue to be bound by the LURA and remain as affordable after the end of the Compliance Period, the Department will implement modified compliance monitoring policies and procedures. Refer to the Extended Use Period Compliance Policy for more information.

(l) **Waiver and Amendment of Rules.**

(1) The Board, in its discretion, may waive any one or more of these Rules if the Board finds that a waiver is appropriate to fulfill the purposes or policies of Chapter 2306, Texas Government Code, or for other good cause, as determined by the Board.

(2) The Department may amend this Rule to comply with IRS guidance, if and when issued.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 19, 2005.

TRD-200504710

Edwina P. Carrington

Executive Director

Texas Department of Housing and Community Affairs

Effective date: November 8, 2005

Proposal publication date: June 10, 2005

For further information, please call: (512) 475-3726



## **TITLE 13. CULTURAL RESOURCES**

### **PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION**

#### **CHAPTER 6. STATE RECORDS**

##### **SUBCHAPTER C. STANDARDS AND PROCEDURES FOR MANAGEMENT OF ELECTRONIC RECORDS**

###### **13 TAC §6.91**

The Texas State Library and Archives Commission adopts amendments to 13 TAC §6.91, relating to standards and procedures for the management of electronic records by state agencies without changes to the proposed text as published in the May 6, 2005, issue of the *Texas Register* (30 TexReg 2635).

The section is amended to change the definitions of an electronic state record and a state record to conform the definitions to both definitions of a state record in Government Code, Chapter 441. The definition of a state record in Government Code, §441.031, is different from that in Government Code, §441.180, in that the former includes an exception for most records associated with alternative dispute resolution procedures from the definition of a state record. The amendments serve to clarify to state agencies that most records associated with alternative dispute resolution procedures are not state records.

The commission did not receive any comments concerning the proposed amendments.

The amendments are adopted under Government Code §441.189, which permits the Texas State Library and Archives Commission to adopt rules relating to the creation and storage of electronic state records.

Government Code, §441.189, is affected by the amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 24, 2005.

TRD-200504772

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

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Proposal publication date: May 6, 2005

For further information, please call: (512) 463-5459



## **TITLE 22. EXAMINING BOARDS**

### **PART 23. TEXAS REAL ESTATE COMMISSION**

#### **CHAPTER 535. GENERAL PROVISIONS SUBCHAPTER F. EDUCATION, EXPERIENCE, EDUCATIONAL PROGRAMS, TIME PERIODS AND TYPE OF LICENSE**

##### **22 TAC §535.64**

The Texas Real Estate Commission (TREC) adopts amendments to §535.64, concerning Accreditation of Schools and Approval of Courses and Instructors, without changes to the proposed text as published in the September 2, 2005, issue of the *Texas Register* (30 TexReg 5245) and will not be republished. Section 535.64(g)(5) adopts by reference Form Ed 5-1 Real Estate Provider Bond. The amendments change the cites in the form to the relevant statutory provisions of Chapter 1101, Texas Occupations Code. House Bill 2813, 77th Legislature (2003), added Chapter 1101, a nonsubstantive codification of The Real Estate License Act, and repealed Article 6573a, Texas Civil Statutes effective June 1, 2003.

The reasoned justification for the amendments is to make the language in the form consistent with the relevant statutory provisions.

No comments were received regarding the amendments as proposed.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 19, 2005.

TRD-200504701



## SUBCHAPTER G. MANDATORY CONTINUING EDUCATION

### 22 TAC §535.71

The Texas Real Estate Commission (TREC) adopts amendments to §535.71, concerning Mandatory Continuing Education: Approval of Providers, Courses and Instructors, with changes to the proposed text as published in the September 2, 2005, issue of the *Texas Register* (30 TexReg 5246). The amendment revises subsection (d)(4) of §535.71 which adopts by reference MCE Form 3A-3 MCE Course Application to parallel existing language in §535.71(r). Under §535.71(r), an applicant must provide a brief written statement that describes the course objective and how the subject matter is related to activities for which a real estate license is required. The adopted amendments differ from those proposed by changing a reference to the correct MCE course application form number in §535.71(s).

The reasoned justification for the amendments is to make the language in the application form consistent with an existing rule requirement.

No comments were received regarding the amendments as proposed.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the adopted amendments.

*§535.71. Mandatory Continuing Education: Approval of Providers, Courses and Instructors.*

(a) The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--The Real Estate License Act, Texas Occupations Code, Chapter 1101.

(2) Applicant--A person seeking approval to be a provider or instructor of a course for which mandatory continuing education credit is given.

(3) Hour--Fifty minutes of actual session time.

(4) Certified legal course instructor--An instructor approved by the Texas Real Estate Commission and certified to teach the required legal update course or the required ethics course.

(5) Commission--The Texas Real Estate Commission.

(6) Day--A calendar day.

(7) Distance learning course--A correspondence course, alternative delivery method course or course offered through video presentation.

(8) Elective credits--The nine hours of non-legal mandatory continuing education required by §1101.455 of the Act.

(9) Instructor--A person approved by the Texas Real Estate Commission to teach mandatory continuing education courses.

(10) MCE--Mandatory Continuing Education.

(11) Person--An individual, partnership, or a corporation, foreign or domestic.

(12) Proctor--A person who monitors a final examination for a course offered by a provider under the guidelines contained in this section. A proctor may be a course instructor, the provider, an employee of a college or university testing center, a librarian, or other person approved by the commission.

(13) Provider--A person approved by the Texas Real Estate Commission to offer courses for which mandatory continuing education credit is given.

(14) Required legal ethics course--A required course created for and approved by the Texas Real Estate Commission to satisfy three of the six legal hours of mandatory continuing education required by §1101.455 of the Act.

(15) Required legal update course--A required course created for and approved by the Texas Real Estate Commission to satisfy three of the six legal hours of mandatory continuing education required by §1101.455 of the Act.

(16) Required legal course or legal credits--The required legal update or legal ethics courses or credits earned for attending such courses.

(17) Student--An individual taking an MCE course for credit.

(b) Mandatory Continuing Education Requirements. On or after January 1, 2005 and except as authorized by §535.92 of this chapter, for the next and all subsequent renewals of a license on active status that is not subject to the annual education requirements of §1101.454 of the Act, the license holder must attend during the term of the current license, two Commission-developed legal courses consisting of a three-hour required legal update course and a three-hour required legal ethics course to satisfy the six legal hours of mandatory continuing education required by §1101.455 of the Act. The remaining nine hours required by §1101.455 of the Act may consist of elective credit courses registered with the commission under this section.

(c) Application. A person who wishes to offer courses accepted by the commission for MCE credit shall apply to the commission for approval to be an MCE provider and shall register each MCE course using application forms prepared by the commission. The commission may refuse to accept any application which is not complete or which is not accompanied by the appropriate filing fee. Each prospective provider shall submit a provider application and at least one principal information form.

(d) Forms. The commission adopts by reference the following forms published and available from the commission, P.O. Box 12188, Austin, Texas 78711-2188:

(1) MCE Form 1A-2, MCE Provider Application;

(2) MCE Form 1B-2, MCE Provider Application Supplement;

- (3) MCE Form 2-3, MCE Principal Information Form;
- (4) MCE Form 3A-3, MCE Course Application;
- (5) MCE Form 3B-3, MCE Course Application Supplement;
- (6) MCE Form 8-4, MCE Course Completion Roster;
- (7) MCE Form 9-7, Alternative Instructional Methods Reporting Form;
- (8) MCE Form 10-2, MCE Credit Request for an Out of State Course;
- (9) MCE Form 11-4, MCE Instructor Credit Request;
- (10) MCE Form 12-2, Individual MCE Elective Credit Request for State Bar Course;
- (11) MCE Form 14-1, Individual MCE Partial Credit Request Form
- (12) MCE Form 15-0, Individual MCE Elective Credit Request for Professional Designation Course; and
- (13) MCE Form 16-0, MCE Instructor Application.

(e) Provider application. To be approved as an MCE provider, a person must satisfy the commission as to the person's ability to administer with honesty, trustworthiness and integrity a course of continuing education in MCE subjects registered with the commission. If the person proposes to employ independent contractors to conduct or to administer the courses, any independent contractor named in the application must meet this standard as if the independent contractor were the applicant; however, the applicant is responsible for responding to communications from the commission relating to the application.

(f) Additional information related to application. The commission may request that an applicant provide additional information, and the commission may terminate an application without further notice if the applicant fails to provide the additional information within 60 days of the mailing of a request by the commission.

(g) Fees. The commission shall establish fees in accordance with the provisions of the Act, §1101.152, at such times as the commission deems appropriate. Fees are not refundable and must be submitted in the form of a check or money order, or, in the case of state agencies, colleges or universities, in a form of payment acceptable to the commission.

(h) Approval of applicants. The commission may authorize the manager or director of the education division of the commission, or a designate, to determine whether applications for MCE providers or instructors should be approved or certified. The commission may disapprove an application for failure to satisfy the commission as to the applicant's honesty, trustworthiness or integrity, or for any reason which would be a ground to suspend or revoke a real estate license. If an application is disapproved, the commission shall provide written notice to the applicant detailing the basis of the decision.

(i) Appeal. An applicant may appeal a disapproval by filing with the commission a written request for a hearing within 10 days after the receipt of the notice of disapproval. Following the hearing, the commission may sustain or withdraw the disapproval or establish conditions for the approval of a provider, course or instructor. Proceedings involving applications shall be conducted in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001. Venue for any hearing conducted under this section shall be in Travis County.

(j) Power of attorney. If a provider does not maintain a fixed office in this state for the duration of the provider's approval to offer courses, the provider shall designate a resident of this state as attorney-in-fact to accept service of process and act as custodian of any records in Texas which the provider is required to maintain by these sections. A power-of-attorney designating the resident must be filed with the commission in a form acceptable to the commission.

(k) Subsequent application for provider approval or course registration. Unless withdrawn earlier for cause as provided by these sections, a provider's authority to offer courses for which MCE credit is given expires two years from the date the provider is approved by the commission. Authority to offer any MCE courses ends with the expiration of the provider's approval, and the provider must pay current fees and reapply for approval as a provider in order to offer MCE courses again. An elective credit course registered with the commission may be offered by the provider for a period of two years after the course is registered or until the provider's authority to act as a provider finally expires or is withdrawn for cause, whichever first occurs. If a course was originally registered by another provider, the registration period is measured from the date of registration for the original provider. A provider may apply for approval to be a provider for another two years no sooner than six months prior to the expiration of existing provider approval.

(l) Approval of instructor. A person who wishes to be an instructor of any MCE course shall apply to the commission for approval using an application form approved by the commission. To be approved as an instructor of any MCE course, an applicant must satisfy the commission as to the applicant's honesty, trustworthiness and integrity. Subsections (f) - (i) of this section apply to an applicant for approval of an instructor.

(m) Term of instructor approval. If the commission determines that the applicant meets the standards for instructor approval, the commission shall approve the application and provide a written notice of the approval to the applicant. Unless surrendered or revoked for cause, the approval will be valid for a period of five years.

(n) Subsequent application for instructor approval. No more than six months prior to the expiration of the current approval, an instructor may apply for approval for another five year period.

(o) Required legal update and ethics courses. The commission shall approve bi-annually a legal update course and a legal ethics course which shall be conducted through providers by instructors certified by the commission under this subchapter. The subject matter and course materials for the courses shall be created for and approved by the commission. The courses expire on December 31 of each odd-numbered year and shall be replaced with new courses approved by the commission. A provider may not offer a new course until an instructor of the course obtains recertification by attending a new instructor training program. Providers must acquire the commission-developed course materials and utilize such materials to conduct the required legal courses. The required legal courses must be conducted as prescribed by the rules in this subchapter and the course materials developed for the commission.

(p) Modification of the required legal courses. Providers and instructors may modify a required legal course only to provide additional information on the same or similar topics covered in the course or to create distance learning courses that are substantially similar to the live courses developed for the commission. To the extent that a required legal course is modified or integrated into a longer course for which additional elective credit is requested, the commission shall grant elective and legal credit for the combined course.



(q) Instructor certification. Only instructors certified by the commission may teach the required legal courses or develop distance learning courses for the presentation of required legal courses. An instructor must obtain prior commission approval under subsection (m) of this section prior to attending an instructor training program. The commission shall issue a written certification to an instructor to teach the applicable required legal course(s) upon the instructor's satisfactory completion of a training program to teach the required legal course(s) that is acceptable to the commission. An instructor may obtain certification to teach either one or both required legal courses. A certified legal course instructor may teach the required legal courses for any approved provider after the instructor has attended an instructor training program. A certified legal course instructor may not independently conduct a required legal course unless the instructor has also obtained approval as a provider. An instructor must obtain written certification from the commission prior to teaching the required legal courses and prior to representing to any provider or other party that he or she is certified or may be certified as a legal course instructor. An instructor's certification to teach a required legal course expires on December 31 of every odd-numbered year. An instructor may obtain recertification by attending a new instructor training program.

(r) Elective credit courses. To be approved to offer a course for MCE elective credit, the provider must demonstrate that the course subject matter is appropriate for a continuing education course for real estate licensees and that the information provided in the course will be current and accurate by submitting a brief statement that describes the objective of the course and explains how the subject matter is related to activities for which a real estate license is required, including but not limited to relevant issues in the real estate market or topics which increase or support the licensee's development of skill and competence.

(s) Elective course application. A provider applicant must submit an MCE Form 3A-3, MCE Course Application and receive written acknowledgment from the commission prior to offering an MCE elective course. Prior to advertising or offering a course offered by another provider, the subsequent provider must submit an MCE Form 3B-3, Course Application Supplement and receive written acknowledgment from the commission.

(t) Legal update and legal ethics course application. A provider must submit an MCE form 3B-3, Course Application Supplement and receive written acknowledgment from the commission prior to offering a required legal update or required legal ethics course.

(u) Core courses for elective credit. Courses approved by the commission for core real estate course credit provided in the Act, §1101.356 and §1101.358, may be accepted for satisfying MCE elective credit course requirements provided the student files a course completion certificate with the commission.

(v) Acceptable combined courses. An elective credit course offered by a provider to satisfy all or part of the nine hours of other than legal topics required by the Act, §1101.455, may be offered with the required legal update course or required legal ethics course.

(w) Required legal courses for real estate related courses. MCE legal update and legal ethics courses may be accepted by the commission as real estate related courses for satisfying the education requirements of §1101.356 and §1101.358, of the Act.

(x) Correspondence courses for elective credit. An MCE provider may register an MCE elective course by correspondence with the commission if the course is subject to the following conditions:

(1) the course must be offered by a college or university accredited by a regional accrediting association, such as the Commission on Colleges of the Southern Association of Colleges and Schools,

or its equivalent, which offers correspondence courses, whether credit or noncredit, in other disciplines;

(2) the content of the course must satisfy the requirements of the Act, §1101.455, and these sections; and

(3) the course does not include a request for required legal course credit.

(y) Alternative delivery method courses for elective credit. An MCE provider may register an MCE elective course by alternative delivery method with the commission if the course is subject to the following conditions:

(1) The content of the course must satisfy the requirements of the Act, §1101.455, and these sections;

(2) the course does not include a request for required legal course credit; and

(3) every provider offering a registered course under this subsection shall:

(A) ensure that a qualified person is available to answer students' questions or provide assistance as necessary;

(B) provide that procedures are in place to ensure that the student who completes the work is the student who is enrolled in the course; and

(C) certify students as successfully completing the course only if the student:

(i) has completed all instructional modules; and

(ii) has attended any hours of live instruction and/or testing required for a given course.

(z) Correspondence courses for required legal credit. The commission may approve a provider to offer an MCE required legal ethics course by correspondence subject to the following conditions:

(1) the course must be offered by a college or university accredited by a regional accrediting association, such as the Commission on Colleges of the Southern Association of Colleges and Schools, or its equivalent, which offers correspondence courses, whether credit or noncredit, in other disciplines;

(2) the content of the course must satisfy the requirements of the Act, §1101.455 and these sections, and must be substantially similar to the legal courses disseminated and updated by the Commission;

(3) students receiving MCE credit for the course must pass either:

(A) a proctored final examination administered under controlled conditions to positively identified students, at a location and by an official approved by the commission and graded by the instructor or, if the examination is being graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider; or

(B) an examination by use of a computer under conditions that satisfy the commission that the examinee is the same person who seeks MCE credit; and

(4) written course work required of students must be graded by an approved instructor or the provider's coordinator or director, who is available to answer students' questions or provide assistance as necessary, using answer keys approved by the instructor or provider.

(aa) Each required legal course offered by correspondence must contain the following:

- (1) course description;
- (2) learning objectives;
- (3) evaluation techniques;
- (4) lessons;
- (5) learning activities;
- (6) final examination;

(7) source materials disseminated by the Commission including all updates; and

(8) instructor grading guidelines, including acceptable answers for lessons, assessments and examinations.

(bb) Alternative delivery method courses for required legal credit. The commission may accept required legal courses offered by alternative delivery method subject to the following conditions.

(1) The content of the course must satisfy the requirements of the Act, §1101.455 and these sections, and must be substantially similar to the legal courses disseminated and updated by the Commission.

(2) Every course accepted under this subsection shall teach to mastery. Teaching to mastery means that the course must, at a minimum:

(A) divide the material into major units of instruction that follows the outline of the applicable required legal course for delivery on a computer or other approved interactive audio or audiovisual programs;

(B) specify the learning objectives for each unit of instruction;

(C) specify an objective, quantitative criterion for mastery used for each learning objective;

(D) implement a structured learning method by which each student is able to attain each learning objective;

(E) provide a means of diagnostic assessment of each student's performance on an ongoing basis during each unit of instruction, measuring what each student has learned and not learned at regular intervals throughout each unit of instruction;

(F) provide a means of tailoring the instruction to the needs of each student as identified in subparagraph (D) of this paragraph. The process of tailoring the instruction shall ensure that each student receives adequate remediation for specific deficiencies identified by the diagnostic assessment;

(G) continue the appropriate remediation on an individualized basis until the student demonstrates achievement of mastery of each unit; and

(H) require that the student demonstrate mastery of all material covered by the learning objectives for the module before the module is completed.

(3) The commission must approve the method by which each of the above elements of mastery in paragraph (2)(A) - (H) of this subsection is accomplished.

(4) The rationale for the education processes implemented in the course must be based on sound instructional strategies which have been systematically designed and proven effective through educational research and development. The basis and rationale for any

proposed instructional approach must be specified in the application for approval. Programs which consist primarily of text material will not be approved.

(5) An approved instructor or the provider's coordinator/director shall grade the written course work.

(6) Every provider offering an approved course under this subsection shall:

(A) ensure that a qualified person is available to answer students' questions or provide assistance as necessary;

(B) satisfy the commission that procedures are in place to ensure that the student who completes the work is the student who is enrolled in the course;

(C) certify students as successfully completing the course only if the student:

(i) has completed all instructional modules required to demonstrate mastery of the material;

(ii) has attended any hours of live instruction and/or testing required for a given course; and

(iii) has passed either:

(I) a proctored final examination administered under controlled conditions to positively identified students, at a location and by an official approved by the commission and graded by the instructor or, if the examination is being graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider; or

(II) an examination by use of a computer under conditions that satisfy the commission that the examinee is the same person who seeks MCE credit; and

(D) provide the students with the same materials given to students who attend the same course by live instruction.

(cc) Supervised Video Instruction for elective course credit. A provider may register a course under subsection (s) of this section to be taught by supervised video instruction if:

(1) the provider complies with §535.72 of this chapter when offering and advertising the course and when completing rosters and retaining records;

(2) a proctor is present during the time the video is shown; and

(3) the provider discloses in any advertisement for the course that the instruction will be by supervised video instruction.

(dd) Supervised Video Instruction for required legal course credit. A provider may register a course under subsection (o) of this section to be taught by supervised video instruction if the provider:

(1) complies with subsection (cc)(1) - (3) of this section;

(2) ensures that a certified instructor is available to answer students' questions or provide assistance as necessary; and

(3) ensures that students receiving MCE credit for the course passed a proctored final examination administered under controlled conditions to positively identified students, at a location and by an official approved by the commission and graded by the instructor or, if the examination is being graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider.

(ee) An applicant must submit an MCE Form 3B-3, MCE Course Application Supplement to seek approval to offer an MCE distance learning required legal course and receive written acknowledgment from the commission prior to offering the course. Distance learning legal courses may be offered on or after July 1, 2005.

(ff) For a distance learning course, the provider shall award the student credit for the course upon completion of the course requirements for credit and shall report the awarding of credit to the commission. Course credit must be reported either by the provider filing a completed MCE Form 9-7, Alternative Instructional Methods Reporting Form, signed by the student, or submitting the information contained in MCE form 9-7 by electronic means acceptable to the commission.

(gg) A provider may use as guest speakers persons who have not been approved as instructors, provided that no more than a total of 50% of the course is taught by the unapproved persons for a registered MCE elective credit course. The commission-registered instructor must remain in the classroom during the guest speaker's presentation.

(hh) A provider may use guest speakers who have not been approved as instructors to conduct a registered MCE elective credit course if:

(1) the provider is an accredited college or university or a professional trade association as defined by §535.62(b) of this chapter; and

(2) the course is supervised and coordinated by a commission-approved instructor who is responsible for verifying the attendance of all who request MCE credit.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 19, 2005.

TRD-200504702  
Loretta R. DeHay  
General Counsel  
Texas Real Estate Commission  
Effective date: November 8, 2005  
Proposal publication date: September 2, 2005  
For further information, please call: (512) 465-3900



## PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

### CHAPTER 571. LICENSING SUBCHAPTER A. EXAMINATION

#### 22 TAC §571.3

The Texas Board of Veterinary Medical Examiners adopts amendments to §571.3 concerning Eligibility for Examination and Licensure without change to the proposed text as published in the *Texas Register* on July 1, 2005 (30 TexReg 3810). This amended section reflects changes to the Veterinary Licensing Act which require the Board to refund license examination fees under certain circumstances. The section defines the circumstances under which a refund may be issued. An emergency situation qualifying a person to a refund is also defined. The

amended section responds to those persons who pay examination fees and then are unable, through no fault of their own, to take the examination.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of §801.151(a) of the Texas Occupations Code which gives the Board authority to adopt rules necessary to administer the Veterinary Licensing Act.

The amendments affect the Veterinary Licensing Act, Occupations Code, Chapter 801, Subchapter F, pertaining to Licensing.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 19, 2005.

TRD-200504726  
Julie A. Barker  
Executive Assistant  
Texas Board of Veterinary Medical Examiners  
Effective date: November 8, 2005  
Proposal publication date: July 1, 2005  
For further information, please call: (512) 305-7555



### CHAPTER 575. PRACTICE AND PROCEDURE 22 TAC §575.27

The Texas Board of Veterinary Medical Examiners adopts amendments to §575.27 concerning Complaints--Receipt, Investigation, and Disposition, without changes to the proposed text as published in the *Texas Register* on July 1, 2005 (29 TexReg 3811). The amendments change the participation of the Board secretary in the review of complaints received by the Board. The amended section will more effectively streamline the complaint review process by removing the Board secretary from the review of non-medical issues and allowing him to concentrate instead on review of medical judgments and practice by veterinarians who are the subject of complaints. The Executive Director will review non-medical complaints. This process will be more efficient and ultimately allow the Board to process more complaints.

No comments were received concerning these amendments.

The amended section is adopted under the authority of the Occupations Code, §801.151(a) which authorizes the Board to adopt rules necessary to administer the Veterinary Licensing Act.

The amendments are proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200504725  
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Executive Assistant  
Texas Board of Veterinary Medical Examiners  
Effective date: November 8, 2005  
Proposal publication date: July 1, 2005  
For further information, please call: (512) 305-7555

## CHAPTER 577. GENERAL ADMINISTRATIVE DUTIES

### SUBCHAPTER B. STAFF AND MISCELLANEOUS

#### 22 TAC §577.15

The Texas Board of Veterinary Medical Examiners adopts amendments to §577.15 concerning Fee Schedule with changes to the proposed text published in the July 1, 2005, issue of the *Texas Register* (30 TexReg 3812). Proposed fees for examinations and all types of license renewals were re-calculated in light of actions by the last Legislature, which resulted in small modifications to the proposed fees as published. Regular license renewals will increase by \$5.00 instead of \$4.00. Examination fees will be unchanged, instead of decreasing as proposed. The re-calculated fees will result in a larger gain to the general revenue over a five-year period than originally estimated.

The overall changes from the proposed fee schedule do not significantly depart from the published schedule and result in a larger gain to the general revenue. The changes will not significantly affect the fees paid by Texas veterinarians, and no new groups or interests are affected by the changes. Thus, the section will not be re-published as a proposed rule.

No comments were received concerning the amended section.

The amendments are adopted under the authority of the Texas Occupations Code, §801.154(a) which permits the Board to adopt rules setting reasonable license fees to cover the cost of administering the Veterinary Licensing Act.

The amendments affect the Veterinary Licensing Act, Texas Occupations Code, §801.303 which pertains to renewal license fees.

#### *§577.15. Fee Schedule.*

The following fees are adopted by the Board:  
Figure: 22 TAC §577.15

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200504727  
Julie A. Barker  
Executive Assistant  
Texas Board of Veterinary Medical Examiners  
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For further information, please call: (512) 305-7555

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 10. TEXAS WATER DEVELOPMENT BOARD

#### CHAPTER 354. MEMORANDA OF UNDERSTANDING

##### 31 TAC §354.4

The Texas Water Development Board (the board) adopts amendments to 31 TAC Chapter 354 concerning the Memoranda of Understanding without changes to the proposed text as published in the September 2, 2005, issue of the *Texas Register* (30 TexReg 5309) and will not be republished. The amendments are adopted to §354.4, memorandum of understanding between the board and the Office of Rural Community Affairs.

The board adopts amendment to §354.4, memorandum of understanding between the board and the Office of Rural Community Affairs, to execute a new memorandum of understanding (MOU) with the Office of Rural Community Affairs ("ORCA"). Pursuant to 2005 Appropriations Act of the Texas Legislature (Rider 8 of the board's appropriation and Rider 3 of ORCA's appropriation), the board and ORCA are again required to continue to coordinate funds as outlined in a MOU to assure that none of the funds appropriated therein are expended in manner that aids the proliferation of colonias or are otherwise used in a manner inconsistent with the intent of the Economically Distressed Areas Program (EDAP) and maximize delivery of the funds and minimize administrative delay in their expenditure. Therefore, the board adopts amendments to §354.4 that will reflect the new MOU with the ORCA, in line with the 2005 Appropriations Act of the Texas Legislature. The current memorandum is set to expire on August 31, 2005. The amendments will establish a new memorandum that is substantially similar to the previous memorandum, and will run from September 1, 2005 to August 31, 2007. No change is proposed to the scope of the responsibilities for either party. ORCA staff has presented this MOU to its Executive Committee which approved the MOU at its August 4, 2005 meeting.

There were no comments received on the proposed amendments.

The amendments are adopted under the authority of the Texas Water Code, §6.101 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State and §6.104 which authorizes the board to enter into memorandum of understanding with other state agencies.

The statutory provision affected by the amendments is Texas Water Code, Chapter 6 and Texas Water Code, §16.342.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 20, 2005.

TRD-200504748

Jonathan Steinberg  
Deputy Counsel  
Texas Water Development Board  
Effective date: November 9, 2005  
Proposal publication date: September 2, 2005  
For further information, please call: (512) 475-2052



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 9. PROPERTY TAX ADMINISTRATION

##### SUBCHAPTER E. TAX OFFICE ADMINISTRATION

###### 34 TAC §9.1001

The Comptroller of Public Accounts adopts amendments to §9.1001, concerning current and delinquent tax receipts and temporary tax receipts, without changes to the proposed text as published in the September 16, 2005, issue of the *Texas Register* (30 TexReg 5930).

Tax Code, §31.075(a) requires that collectors for a taxing unit issue a receipt showing the taxable value and the amount of tax imposed by the unit on the property in one or more tax years for which the information is requested by a property owner or a property owner's agent. The receipt must describe the property in a manner prescribed by the comptroller.

The section is being amended in response to House Bill 3101, 79th Legislature, Regular Session, effective September 1, 2005. The new law states that if the amount of the tax for the current year has not been calculated when the request for a tax receipt is made, the collector shall issue a statement indicating that taxes for the current year have not been calculated. The section is being amended to add this statement in the list of information required to be shown on tax receipts.

The section is also being amended to include requirements of temporary tax receipts presently found in §9.3043, in response to agency rule review. Temporary tax receipts are created because of payment of taxes under protest and are a form of tax receipt as authorized by Tax Code, §31.075(a). In order to consolidate these rules on tax receipts, §9.3043 is being repealed and its provisions incorporated into §9.1001.

No comments were received regarding adoption of the amendment.

This amended section is adopted under and implements Tax Code, §31.075(a).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 20, 2005.

TRD-200504744

Martin Cherry  
Chief Deputy General Counsel  
Comptroller of Public Accounts  
Effective date: November 9, 2005  
Proposal publication date: September 16, 2005  
For further information, please call: (512) 475-0387



## SUBCHAPTER H. TAX RECORD REQUIREMENTS

### 34 TAC §9.3038

The Comptroller of Public Accounts adopts amendments to §9.3038, concerning current, delinquent, and special valuation rollback tax bills or statements, without changes to the proposed text as published in the September 16, 2005, issue of the *Texas Register* (30 TexReg 5931).

Tax Code, §31.01(c)(1), requires certain information to be included in tax bills or separate statements accompanying tax bills. New Tax Code, §33.045, requires specific language to be included on tax bills.

The section is being amended in response to House Bill 1984, 79th Legislature, Regular Session, effective January 1, 2006, and Senate Bill 18, 79th Legislature, Regular Session, effective June 18, 2005. Tax bills must include the percentage difference in appraised value of real property that is the subject of the tax and the percentage difference in taxes imposed on the real property for the current tax year as compared to the fifth tax year before that tax year. Tax bills must also state for the current tax year and the five preceding years for real property the appraised and taxable values of the property, the total tax rate for the unit, and the amount of taxes imposed on the property by the unit. If any of the information is not available for the preceding six years, a statement of its unavailability must be included.

The section is also being amended in response to House Bill 2491, 79th Legislature, Regular Session, effective September 1, 2005, to require rendition penalties authorized by Tax Code, §22.28, to be included on tax bills. It also requires that tax bills include specific language concerning a taxpayer's right to have payment of taxes postponed.

The section is also being amended in response to Senate Bill 898, 79th Legislature, Regular Session, effective September 1, 2005, to require that tax bills be mailed to each person in whose name the property is listed on the tax roll and to the person's agent.

The section is also being amended in response to agency rule review to require other information as authorized by Tax Code, §31.01(c) and to correct technical errors.

No comments were received regarding adoption of the amendment.

This amended section is adopted under and implements Tax Code, §31.01 and §22.28(b).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 20, 2005.

TRD-200504745  
Martin Cherry  
Chief Deputy General Counsel  
Comptroller of Public Accounts  
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For further information, please call: (512) 475-0387



### 34 TAC §9.3040

The Comptroller of Public Accounts adopts amendments to §9.3040, concerning tax certificates, without changes to the proposed text as published in the September 16, 2005, issue of the *Texas Register* (30 TexReg 5932).

Tax Code, §31.08 provides that a collector for a taxing unit must issue a certificate, at the request of any person, showing the amount of delinquent taxes, penalties, and interest due on a property according to the unit's current tax records.

The section is being amended in response to House Bill 2491, 79th Legislature, Regular Session, effective September 1, 2005. The new law states that certificates must also include any known costs and expenses under Tax Code, §33.48, in addition to the amount of delinquent taxes, penalties, and interest due on a property.

The section is also being amended in response to Senate Bill 898, 79th Legislature, Regular Session, effective September 1, 2005. The new law provides that if a person transfers property accompanied by a tax certificate that erroneously fails to include property because of its omission from an appraisal roll, the unit's tax lien is extinguished and the purchaser is not liable for taxes on the omitted property. The person who was liable for the tax for the tax year for which the property was omitted from the appraisal roll remains personally liable for taxes, penalties, or interest.

The section is also being amended in response to agency rule review to clarify wording in the rule and omit a reference to the State Property Tax Board.

No comments were received regarding adoption of the amendment.

This amended section is adopted under and implements Tax Code, §31.08.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200504746  
Martin Cherry  
Chief Deputy General Counsel  
Comptroller of Public Accounts  
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For further information, please call: (512) 475-0387



### 34 TAC §9.3043

The Comptroller of Public Accounts adopts the repeal of §9.3043, concerning temporary tax receipts, without changes to the proposal as published in the September 16, 2005, issue of the *Texas Register* (30 TexReg 5933).

The comptroller is repealing the existing rule to consolidate its provisions with §9.1001, concerning current and delinquent tax receipts. An amendment to §9.1001 will incorporate the requirements for issuance of temporary tax receipts, as well as add the requirement for a statement about circumstances when taxes have not been calculated in a current tax year as required by an amendment to Tax Code, §31.075, enacted by the 79th Legislature and effective September 1, 2005.

No comments were received regarding adoption of the repeal.

This repeal is adopted under and implements Tax Code, §31.075.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Martin Cherry  
Chief Deputy General Counsel  
Comptroller of Public Accounts  
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For further information, please call: (512) 475-0387



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 3. TEXAS YOUTH COMMISSION

#### CHAPTER 81. INTERACTION WITH THE PUBLIC

##### 37 TAC §81.70

The Texas Youth Commission (the commission) adopts new §81.70, concerning Acceptance of Gifts of \$500 or More, without changes to the proposed text as published in the September 16, 2005, issue of the *Texas Register* (30 TexReg 5933).

The justification for the new rule is public acknowledgment of sizable gifts to the agency. The new rule will set forth the commission's procedure regarding acceptance of gifts valued at \$500 or more.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Government Code §575.003 which provides the commission with the authority to accept a gift of \$500 or more if the board acknowledges acceptance of the gift in an open meeting not later than the 90th day after the date of acceptance.

The adopted rule implements the Human Resources Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200504712  
Dwight Harris  
Executive Director  
Texas Youth Commission  
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Proposal publication date: September 16, 2005  
For further information, please call: (512) 424-6014



## CHAPTER 85. ADMISSION, PLACEMENT, AND PROGRAM COMPLETION

The Texas Youth Commission (the commission or TYC) adopts amendments to §85.3 and §85.25, concerning admission and placement, without changes to the proposed text as published in the September 16, 2005, issue of the *Texas Register* (30 TexReg 5934).

The justification for amending the sections is compliance with state law.

The amendment to §85.3 will ensure that parents of TYC youth are notified that contraband money found in possession of a youth in a residential program will be deposited in the student benefit fund, and that providing a TYC youth alcohol, drugs, tobacco or a cellular phone is a third degree felony and could be subject to prosecution. Pursuant to House Bill 1068, the commission is required to secure DNA samples from all youth with a felony conviction or adjudication; therefore the section was amended to include all youth with a felony conviction or adjudication in the list of youth from whom a DNA sample will be obtained upon admission.

The amendment to §85.25 will update the reference to §95.11 to reflect the current title of that rule.

No comments were received regarding adoption of the amendments.

### SUBCHAPTER A. COMMITMENT AND RECEPTION

#### 37 TAC §85.3

The amendment is adopted under the Human Resources Code, §61.0385, which provides the commission with the authority to establish an assessment center, and §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The adopted amendment implements the Human Resources Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200504715  
Dwight Harris  
Executive Director  
Texas Youth Commission  
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For further information, please call: (512) 424-6014



## SUBCHAPTER B. PLACEMENT PLANNING

### 37 TAC §85.25

The amendment is adopted under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The adopted amendment implements the Human Resources Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200504716  
Dwight Harris  
Executive Director  
Texas Youth Commission  
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For further information, please call: (512) 424-6014



## CHAPTER 85. ADMISSION, PLACEMENT, AND PROGRAM COMPLETION

The Texas Youth Commission (the commission) adopts amendments to §85.21 and §85.45, concerning placement planning and movement, without changes to the proposed text as published in the August 19, 2005, issue of the *Texas Register* (30 TexReg 4791).

The justification for amending the sections is ensuring completion of the Resocialization program for certain violent offenders, efficient use of agency resources, and timely parole release of eligible youth.

The amendment to §85.21 updates the reference to §85.45 in order to reflect the current rule title.

The amendment to §85.45 excludes certain violent offenders from release due to overpopulation and adds a requirement for director-level authorization in order to invoke population control releases at 3% above budgeted capacity.

No comments were received regarding adoption of the amendments.

### SUBCHAPTER B. PLACEMENT PLANNING

#### 37 TAC §85.21

The amendment is adopted under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The adopted amendment implements the Human Resources Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200504713  
Dwight Harris  
Executive Director  
Texas Youth Commission  
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Proposal publication date: August 19, 2005  
For further information, please call: (512) 424-6014



## SUBCHAPTER C. MOVEMENT WITHOUT PROGRAM COMPLETION

### 37 TAC §85.45

The amendment is adopted under the Human Resources Code, §61.081, which provides the commission with the authority to release under supervision any child in its custody and place the child in his or her home or in any situation or family approved by the commission.

The adopted amendment implements the Human Resources Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200504714  
Dwight Harris  
Executive Director  
Texas Youth Commission  
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Proposal publication date: August 19, 2005  
For further information, please call: (512) 424-6014



## CHAPTER 87. TREATMENT SUBCHAPTER B. SPECIAL NEEDS OFFENDER PROGRAMS

### 37 TAC §87.85

The Texas Youth Commission (the commission) adopts an amendment to §87.85, concerning Sex Offender Registration, without changes to the proposed text as published in the

September 16, 2005, issue of the *Texas Register* (30 TexReg 5935).

The justification for amending the section is compliance with state law. The amendment will add the new offense found in the Texas Penal Code *Online Solicitation of a Minor* to the list of reportable adjudications for youth whose duty to register as a sex offender has not been excused.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Code of Criminal Procedure, §62.02, which provides the commission with the authority to register certain youth as sex offenders.

The adopted rule implements the Human Resources Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200504717  
Dwight Harris  
Executive Director  
Texas Youth Commission  
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For further information, please call: (512) 424-6014



## CHAPTER 95. YOUTH DISCIPLINE SUBCHAPTER A. DISCIPLINARY PRACTICES

### 37 TAC §§95.3, 95.11, 95.17

The Texas Youth Commission (the commission) adopts amendments to §§95.3, 95.11, and 95.17, concerning disciplinary practices, without changes to the proposed text as published in the September 16, 2005, issue of the *Texas Register* (30 TexReg 5936).

The justification for amending the sections is providing for increased safety for staff and youth.

The amendment to §95.3 adds certain prohibited items to the types of items or substances which are considered Category I rule violations for youth in residential placements to possess. Additionally, clarification is made to the definition of the Category II rule violation entitled "Contraband."

The amendment to §95.11 describes the disposition of contraband money found in the possession of youth.

The amendment to §95.17 includes "chunking bodily fluids" as a behavior offense which would make a youth eligible for placement in the Behavior Management Program. A reference to §93.12, concerning Visitation, is also added to address the rules governing visitation of youth in the Behavior Management Program.

No comments were received regarding adoption of the amendments.



The amendments are adopted under the Human Resources Code, §61.075, which provides the commission with the authority to order the child's confinement under conditions it believes best designed for the child's welfare and the interests of the public, and §61.076, which provides the commission with the authority to require the modes of life and conduct that seem best adapted to fit the child for return to full liberty without danger to the public.

The adopted rules implement the Human Resources Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200504720

Dwight Harris

Executive Director

Texas Youth Commission

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For further information, please call: (512) 424-6014



## SUBCHAPTER B. DUE PROCESS HEARINGS PROCEDURES

### 37 TAC §95.55

The Texas Youth Commission (the commission) adopts an amendment to §95.55, concerning Level II Hearing Procedure, without changes to the proposed text as published in the September 16, 2005, issue of the *Texas Register* (30 TexReg 5939).

The justification for amending the section is compliance with state law. The amendment adds deposit of contraband money found in the possession of a youth into the Student Benefit Fund as a potential disposition in Level II due process hearings.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.0432, which provides the commission with the authority to deposit contraband money found in the possession of a youth in the Student Benefit Fund.

The adopted rule implements the Human Resources Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200504721

Dwight Harris

Executive Director

Texas Youth Commission

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For further information, please call: (512) 424-6014



## CHAPTER 97. SECURITY AND CONTROL

### SUBCHAPTER A. SECURITY AND CONTROL

#### 37 TAC §97.10, §97.11

The Texas Youth Commission (the commission) adopts amendments to §97.10 and §97.11, concerning Security and Control. Section 97.11 is adopted with changes to the proposed text as published in the September 16, 2005, issue of the *Texas Register* (30 TexReg 5939). Section 97.10 is adopted without changes and will not be republished. Changes to the proposed text consist of minor grammatical corrections in §97.11.

The justification for amending the sections is compliance with state law. The amendment to §97.10 adds a reference for the definition of contraband as used in the commission's rules. The amendment to §97.11 clarifies that disposal of contraband money is subject to different procedures than other types of contraband.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Human Resources Code, §61.0432, which provides the commission with the authority to deposit contraband money found in the possession of a youth in the Student Benefit Fund, and §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions

The adopted rule implements the Human Resources Code, §61.034.

#### *§97.11. Control of Unauthorized Items Seized.*

(a) Purpose. The purpose of this policy is to provide for the preservation, control, and/or disposition of all contraband including physical evidence obtained in connection with a violation of law and/or rule violations.

(b) Applicability. This rule applies to contraband items, as defined in §91.7 of this title (relating to Youth Personal Property), related to youth in TYC residential facilities.

(c) Contraband. Seized contraband consisting of sexually explicit pictures, or items which advocate delinquent subculture values shall be either destroyed or forwarded to the youth's parents or managing conservator, at the youth's option unless an investigation is initiated. If an investigation is initiated, the evidence shall be retained by the evidence custodian until the completion of all investigations.

(d) Contraband - Potential Evidence.

(1) Seized contraband that may be used as evidence in a due process proceeding will be properly identified, documented, and maintained until properly disposed of pursuant to policy.

(2) The facility administrator will designate an evidence custodian to maintain contraband in a key-locked secure location and to ensure a chain of custody until the item is no longer needed. The key shall be accessible only to the facility administrator and evidence custodian.

(3) Any staff discovering or taking possession of contraband shall be responsible for its preservation until transferred to the appropriate authority.

(4) Depending on the nature of the investigation, the evidence may be given to law enforcement authorities.

(5) After all administrative/legal proceedings have been concluded, one of the following must occur:

(A) destroy contraband item(s), other than contraband money, in the presence of at least two staff members; or

(B) send contraband item(s), other than contraband money, to the youth's home; or

(C) return contraband item(s) to include contraband money (if applicable) to the owner; or

(D) deposit contraband money possessed by a youth into the student benefit fund pursuant to §95.11 of this title (relating to Disciplinary Consequences).

(e) Contraband/Evidence in a Potential Crime Scene. A potential crime scene could be an apparent death, major injury, sexual assault and/or major property damage. The area shall be immediately secured and access prohibited into the potential crime scene or area containing potential evidence. Staff discovering a potential crime scene shall immediately notify the facility administrator. Staff shall not enter the area to clean or disturb the potential evidence, clothing, body fluids, etc. until authorized by the facility administrator. Only investigating law enforcement personnel should handle the evidence.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Dwight Harris

Executive Director

Texas Youth Commission

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For further information, please call: (512) 424-6014



## CHAPTER 99. GENERAL PROVISIONS

### SUBCHAPTER B. YOUTH FUNDS

#### 37 TAC §99.31

The Texas Youth Commission (the commission) adopts an amendment to §99.31, concerning Student Trust Fund, without changes to the proposed text as published in the September 16, 2005, issue of the *Texas Register* (30 TexReg 5940).

The justification for amending the section is compliance with state law. The amendment deletes the language regarding unauthorized money being placed in the Student Trust Fund. Under House Bill 1575, unauthorized money which is considered contraband money will be deposited in the Student Benefit Fund.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.0432, which provides the commission with the authority to deposit contraband money found in the possession of a youth into the Student Benefit Fund.

The adopted rule implements the Human Resources Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER C. MISCELLANEOUS

#### 37 TAC §99.71

The Texas Youth Commission (the commission) adopts new §99.71, concerning Student Benefit Fund, without changes to the proposed text as published in the September 16, 2005, issue of the *Texas Register* (30 TexReg 5941).

The justification for the new rule is compliance with state purchasing rules and regulations and other laws and regulations regarding general revenue fund expenditures. The new rule establishes procedures for the deposit of funds such as donations, proceeds from canteens or vending machines, or any proceeds from youth fund raising projects into the student benefit fund.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Human Resources Code, §61.043, which provides the commission with the authority to accept donations of money to be placed in the Student Benefit Fund and expended as other state money is expended, and §61.0431, which provides the commission with the authority to deposit the proceeds from the operation of canteens and vending machines at facilities under the jurisdiction of the commission into the Student Benefit Fund.

The adopted rule implements the Human Resources Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## PART 13. TEXAS COMMISSION ON FIRE PROTECTION

### CHAPTER 423. FIRE SUPPRESSION SUBCHAPTER A. MINIMUM STANDARDS FOR STRUCTURE FIRE PROTECTION PERSONNEL CERTIFICATION

#### 37 TAC §423.3

The Texas Commission on Fire Protection (TCFP) adopts an amendment to §423.3, concerning minimum standards for basic structure fire protection personnel certification, in Chapter 423, entitled Fire Suppression. The amendment is adopted without changes to the proposed text published in the August 5, 2005, issue of the *Texas Register* (30 TexReg 4452), and will not be republished.

The purpose of the adopted amendment is to clarify that one of the requirements for basic structure certification, when using reciprocity for International Fire Service Accreditation seals, is meeting the medical training requirements specified in §423.1(b), which is defined as successful completion of a commission recognized emergency medical course. Section 423.1(b) lists the recognized medical emergency training as follows: Texas Department of Health Emergency Medical Service Personnel certification training; an American Red Cross Emergency Response course, including the optional lessons and enrichment sections; an American Safety and Health Institute First Responder course; National Registry of Emergency Medical Technicians certification; or medical training deemed equivalent by the commission.

No comments were received on the proposed amendment.

The amendment is adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022(a)(5), which provides the TCFP with the authority to establish minimum education standards for appointment as basic and advanced fire protection personnel.

Texas Government Code, §419.008 and §419.022(a)(5) are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## CHAPTER 425. FIRE INSTRUCTORS

The Texas Commission on Fire Protection (TCFP) adopts the repeal of existing Chapter 425, entitled Fire Instructor, and new Chapter 425, entitled Fire Service Instructors. Existing Chapter 425 is comprised of §§425.1, 425.3, 425.5, 425.7, 425.9, 425.201, 425.203, 425.205, 425.207, 425.209, 425.301, and 425.401. The repeals and new chapter are adopted without changes to the proposed text published in the August 5, 2005, issue of the *Texas Register* (30 TexReg 4452), and will not be republished.

Adopted new Chapter 425 consists of new §§425.1, 425.3, 425.5, 425.7, 425.9, and 425.11, concerning minimum standards for certification as a Fire Service Instructor, Fire Service Instructor I, Fire Service Instructor II, Fire Service Instructor III, Master Fire Service Instructor III, and International Fire Service Accreditation Congress (IFSAC) seals for fire service instructors. Upon adoption, the effective date of new Chapter 425 and the repeal of existing Chapter 425 will be March 1, 2006.

The purpose of the repeal of existing Chapter 425 is to provide for a restructuring of the instructor certification rules into a new chapter with the following changes in organization and requirements. Certification categories have been redesignated with new titles. Fire Education Specialist requirements have been deleted. The existing training requirements have been replaced in the new chapter with a requirement of completion of the curricula based upon the National Fire Protection Association (NFPA) standard for Fire Service Instructor I, II and III, with the exception of those individuals with degrees in education. The Associate Instructor designation will be phased out.

The adopted new chapter provides that training programs for fire service instructor certification that are started on or after March 1, 2006 must meet the curriculum and competencies based on National Fire Protection Association (NFPA) 1041. Upon adoption of the new chapter, current instructor certificates will have existing certificates renewed at the appropriate new certification level.

Adopted new §425.1, Minimum Standards for Fire Service Instructor, provides guidelines regarding the effective date of the rule, standards for equivalency determinations regarding training (including IFSAC-accredited programs), and requirements related to education, training, certifications held, and requirements for continuing education.

Adopted new §425.3, Minimum Standards for Fire Service Instructor I Certification, provides requirements regarding years of experience, education (including a field examiner orientation course), and testing for Instructor I certification.

Adopted new §425.5, Minimum Standards for Fire Service Instructor II Certification, provides requirements regarding years of experience, prior certifications held, and education and testing for Instructor II certification.

Adopted new §425.7, Minimum Standards for Fire Service Instructor III certification, provides requirements regarding years of experience, prior certifications held, education, and testing for Instructor III certification.

Adopted new §425.9, Minimum Standards for Master Fire Service Instructor III Certification, provides requirements regarding prior certifications held, experience, and educational degrees held for Master Fire Service Instructor III certification.

Adopted new §425.11, International Fire Service Accreditation Congress Seal, provides the requirements and limitations on issuance and use of the IFSA seal.

The TCFP has determined these repeals and new rules to be in compliance with Texas Government Code §419.022(b).

Comments on the proposed repeals and new rules were received from the Ad Hoc Instructor Committee, a subcommittee of the commission's Testing Committee; Lydia Fluitt, owner of Programs Unlimited; Dr. James Gaston, Executive Director of the Texas Fire Chiefs' Association, Brent Batla, CEO of FireTraining.com, Harry Simms, Fire Chief of the Texarkana Fire Department; and Captain Calvin Poole, Training Officer for the Manchaca Fire Department.

The Ad Hoc Instructor Committee did not comment specifically in favor of or against the proposed new rules as published in the *Texas Register*, but at the posted open meeting of the Fire Fighters Advisory Committee on October 4, 2005, suggested that the following language be added to the proposed new rules when they were adopted. In new §425.1, Minimum Standards for Fire Service Instructor Certification, the Committee suggested that a new subsection (k) be added, with the following language.

*"Within one year of the effective date of this section, an individual is eligible to take the commission examination for Fire Instructor III, upon documentation to the Commission that the individual has demonstrated the minimum requirements of the National Fire Protection Association Standard 1041, Chapter 6 (2003 edition), and upon successful completion may apply for certification as a Fire Instructor III. Requirements: Instructor II certification; a letter from the chief or department verifying that the individual had been assigned for at least 24 months to the training facility as an instructor, lead instructor or training officer (as defined in the Standards Manual for Fire Protection Personnel Section 421.5); and has demonstrated the minimum job performance requirements of National Fire Protection Association Standards 1041, Chapter 6 (2003 edition)."*

The Ad Hoc Instructor Committee also suggested at the posted open meeting of the Fire Fighters Advisory Committee on October 4, 2005, that in new §425.3(a)(2) and §425.5(a)(3), the words *"which was taught at an on-site facility"* be added to the requirement so that §425.3(a)(2) would read: *"have completed the appropriate curriculum for Fire Service Instructor I contained in Chapter 8 of the commission's Certification Curriculum Manual, which was taught at an on-site facility."* Section 425.5(a)(3) would read: *"have completed the appropriate curriculum for Fire Service Instructor II contained in Chapter 8 of the commission's Certification Curriculum Manual, which was taught at an on-site facility."*

Dr. James Gaston, Executive Director of the Texas Association of Fire Chiefs, commented at the October 6, 2005 public meeting of the Texas Commission on Fire Protection against the changes regarding disallowing on-line delivery of instructor courses that were suggested by the Ad Hoc Instructor Committee in their pub-

lic comment on the proposed new rules. Dr. Gaston stated that this was a substantive change, that the issue had not been debated or discussed by the commission's Advisory Committee, and that he would like to see that happen. He also stated that there were a number of people who were in favor of on-line delivery of instructor courses, that there are complete degree programs offered on-line all over the world, and that to think that they could not be offered on-line was just not clear thinking.

Dr. Gaston also expressed concern about the process by which this new language was added to the rule after the proposed version had been published in the *Texas Register* for a 30-day period to fulfill the statutory requirement for public notice of rule changes. During the public meeting, he sought to clarify whether this language change was an official comment from the Ad Hoc Instructor Committee, which he considered to be a public body. He suggested that the recommendation to add language should have been passed on to the Testing Committee, and then to the Advisory Committee, and expressed concern about that process, because it would have meant some prior notice about the change to the proposal. Commissioners and staff clarified during the public meeting that because the Ad Hoc Instructor Committee was not required by statute to post an agenda, it was not an official committee, and that their suggestion to add language was considered to be a public comment, the same as any public comment submitted by an individual.

Brent Batla, CEO of FireTraining.com, commented at the October 6, 2005 public meeting of the Texas Commission on Fire Protection against the changes regarding disallowing on-line delivery of instructor courses that were suggested by the Ad Hoc Instructor Committee in their public comment on the proposed new rules. Mr. Batla commented that Texas was leading the U.S. and possibly the world in on-line fire fighter education, and that he had found at least 20 Ph.D. programs in education being offered on-line. He stated that his company has done quite a few instructor classes on-line, and that it was one of the easiest disciplines to teach on-line because it was pretty clear cut what the NFPA requires fire service instructors to know. He went on to say that a lot of his clientele were small fire departments with very limited budgets, that on-line training allowed these departments to avoid the traveling expenses and overtime incurred with on-site training, and that this rule change would have a tremendous impact on them, as well as on small businesses. He also stated that they had not had a chance to study thoroughly the NFPA job performance requirements (JPRs), but that they would like more time to review them before ruling out on-line training completely.

Lydia Fluitt, owner of Programs Unlimited, commented at the October 6, 2005 public meeting of the Texas Commission on Fire Protection against the changes regarding disallowing on-line delivery of instructor courses suggested by the Ad Hoc Instructor Committee in their public comment on the proposed new rules. Ms. Fluitt commented that this rule change would have an impact on small businesses, in particular her own business, because instructor courses were all she taught, and that no one had been kicked out of the fire service or not allowed to instruct following taking her classes. She also stated her concern for the fire departments that cannot afford to send someone to an onsite class for the extended amount of time resulting from the newly expanded instructor curriculum requirements (effective March 1, 2006). Ms. Fluitt expressed concern that the public had not had any input into this proposed change; that it was being brought to the commission at the very last minute; and that it should go back to the Advisory Committee for consideration so that those who had an interest could approach that committee. She also

asked that the commission request a formal interpretation of the NFPA JPRs, since the commission had stated that this change was based on the JPRs.

Harry Simms, Fire Chief of the Texarkana Fire Department, commented at the October 6, 2005 public meeting of the Texas Commission on Fire Protection against the changes regarding disallowing on-line delivery of instructor courses suggested by the Ad Hoc Instructor Committee in their public comment to the proposed new rules. Chief Simms commented that his medium-sized department has trained many people on-line, that it has worked well for them, and that it's a lot less expensive than paying for people to travel to onsite training. He stated that he didn't know enough about the NFPA 1041 standard to know if this was a valid recommendation or not, but that he was concerned that there had been no opportunity for the public to comment on this change, and that he strongly objected to the change proceeding forward at this point in this manner.

Captain Calvin Poole, Training Officer for the Manchaca Fire Department, submitted written comments to the commission against the changes regarding disallowing on-line delivery of instructor courses suggested by the Ad Hoc Instructor Committee to the proposed new rules. Captain Poole stated that this rule change would be a step backward from advances in training delivery over the past few years. He also stated that distance learning has opened doors to people that otherwise would not have had the opportunity to gain higher levels of education and certification; that he has benefited directly from having instructor training available on-line. He found the courses to be challenging, access to the instructor valuable, and the ability to discuss issues with other students enlightening; and that it would have taken much longer and cost more to take the courses onsite.

Captain Poole also stated that instructor courses can be taught effectively in a distance learning format--the key is in the course design and delivery. He suggested that concerns over the need to have an audience for certain aspects of instructor training could be addressed in a number of ways, such as students having a designated time to meet in person with the instructor or presenting to an audience locally under the supervision of another instructor; and that on-line delivery can also be enhanced by streaming or downloadable video, or additional media material being delivered to the student via mail.

Captain Poole described his experience with coordinating the on-line instructor training of a dozen of his firefighters as a great asset to his "one-person training division"--a benefit not available with on-site delivery, because he "could not get everyone on the same schedule to make it happen." He stated that "as instructors we should embrace technology as another tool in our arsenal for program delivery; and that an effective course hinges on proper planning, design, and delivery by the instructor--the mode of delivery is not the pivotal factor."

After discussion and consideration of all of the comments and suggestions for added language to the proposed new rules, the Commission voted at the October 6, 2005 commission meeting to adopt the new rules without changes to the proposed text as published in the August 5, 2005, *Texas Register*. The Commissioners also directed the Fire Fighter Advisory Committee to put on their next agenda for consideration the issue of amending the instructor rules concerning on-line instructor training.

## SUBCHAPTER A. FIRE SERVICE INSTRUCTOR CERTIFICATION

### 37 TAC §§425.1, 425.3, 425.5, 425.7, 425.9

The repeals are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.028(3), which provides the TCFP with the authority to certify persons as qualified fire protection personnel instructors under conditions which the TCFP prescribes.

Texas Government Code, §§419.008, 419.022, and 419.028 are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gary L. Warren, Sr.  
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## SUBCHAPTER B. FIRE EDUCATION SPECIALIST CERTIFICATION

### 37 TAC §§425.201, 425.203, 425.205, 425.207, 425.209

The repeals are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.028(3), which provides the TCFP with the authority to certify persons as qualified fire protection personnel instructors under conditions which the TCFP prescribes.

Texas Government Code, §§419.008, 419.022, and 419.028 are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER C. ASSOCIATE INSTRUCTOR CERTIFICATION

### 37 TAC §425.301

The repeal is adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.028(3), which provides the TCFP with the authority to certify persons as qualified fire protection personnel instructors under conditions which the TCFP prescribes.

Texas Government Code, §§419.008, 419.022, and 419.028 are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER D. INSTRUCTOR TRAINING COURSES

### 37 TAC §425.401

The repeal is adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.028(3), which provides the TCFP with the authority to certify persons as qualified fire protection personnel instructors under conditions which the TCFP prescribes.

Texas Government Code, §§419.008, 419.022, and 419.028 are affected by this rulemaking.

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## CHAPTER 425. FIRE SERVICE INSTRUCTORS

### 37 TAC §§425.1, 425.3, 425.5, 425.7, 425.9, 425.11

The new rules are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.028(3), which provides the TCFP with the authority to certify persons as qualified fire protection personnel instructors under conditions which the TCFP prescribes.

Texas Government Code, §§419.008, 419.022, and 419.028 are affected by this rulemaking.

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## CHAPTER 429. MINIMUM STANDARDS FOR FIRE INSPECTORS

The Texas Commission on Fire Protection (TCFP) adopts amendments to §429.3 and §429.203, concerning minimum standards for basic fire inspector certification and minimum standards for basic fire inspector certification (new track), in Chapter 429, entitled Minimum Standards for Fire Inspectors. The amendments are adopted without changes to the proposed text published in the August 5, 2005, issue of the *Texas Register* (30 TexReg 4456), and will not be republished.

The purpose of the amendments is to update the list of classes used to fulfill the training program requirement for fire inspector certification.

The amendments remove the Fundamentals of Fire Protection and Fundamentals of Speech classes and add a Fire Prevention Codes and Investigations class as an option for the Fire Prevention class; and reduce the total semester hours from 21 to 15. The Building Code class and Building Construction class may be combined into a single three semester hour class, in which case the total semester hours may be reduced to 12.

No comments were received on the proposed amendments.

The TCFP has determined these amendments to be in compliance with Texas Government Code, §419.022(b).

## **SUBCHAPTER A. MINIMUM STANDARDS FOR FIRE INSPECTOR CERTIFICATION BASED ON REQUIREMENTS IN EFFECT PRIOR TO JANUARY 1, 2005**

### **37 TAC §429.3**

The amendment is adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.029, which provides the TCFP with the authority to establish minimum curriculum requirements for training facilities.

Texas Government Code, §§419.008, 419.022, and 419.029 are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## **SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE INSPECTOR CERTIFICATION**

### **37 TAC §429.203**

The amendment is adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.029, which provides the TCFP with the authority to establish minimum curriculum requirements for training facilities.

Texas Government Code, §§419.008, 419.022, and 419.029 are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## **CHAPTER 435. FIRE FIGHTER SAFETY**

### **37 TAC §435.3**

The Texas Commission on Fire Protection (TCFP) adopts an amendment to §435.3, concerning self-contained breathing apparatus (SCBA), in Chapter 435, entitled Fire Fighter Safety. The amendment is adopted without changes to the proposed text published in the August 5, 2005, issue of the *Texas Register* (30 TexReg 4457) and will not be republished.

The purpose of the proposed amendment is to have fire departments follow the manufacturer's recommendations concerning inspection and maintenance of each self-contained breathing apparatus that an entity owns.

The adopted amendment deletes previously developed agency standards in paragraphs (3) and (8) that mandate the frequency of SCBA inspection, describes the components of an acceptable inspection, and mandates the frequency and components of acceptable annual testing of each SCBA, including a flow test. The new adopted requirement is for departments to follow the manufacturer's recommendation in those areas. A new paragraph (6) has been added that provides that fire suppression entities must maintain and provide upon request by the commission standard operating procedures regarding the selection, care, and maintenance of SCBA that comply with National Fire Protection Association Standard 1852, 2002 Edition.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties, and Texas Government Code, §419.041, which provides the TCFP with the authority to set requirements for self-contained breathing apparatus use, including safety standards, maintenance, testing, and regular inspection.

Texas Government Code, §419.041 is affected by the proposed rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Executive Director

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## CHAPTER 441. CONTINUING EDUCATION

### 37 TAC §441.3, §441.5

The Texas Commission on Fire Protection (TCFP) adopts amendments to §441.3 and §441.5, concerning continuing education definitions and general continuing education requirements, in Chapter 441, entitled Continuing Education. The amendments are adopted without changes to the proposed text published in the August 5, 2005, issue of the *Texas Register* (30 TexReg 4459), and will not be republished.

The purpose of the amendment to §441.3 is to clarify the rule language regarding Track A and Track B lists of acceptable training. The purpose of the proposed amendment to §441.5 is to clarify rule language regarding: renewal periods; procedures for individuals returning from military service; and what types of documentation of continuing education are acceptable.

The proposed amendment to §441.3 rewords the definitions in Track A and Track B in paragraphs (3) and (4) by deleting references to "appointed disciplines" and substituting the words "certifications held." The proposed amendment also adds language that makes explicit that Track B training is defined as fire service training or education that is not contained in the commission's certification curriculum manual for certifications held.

The proposed amendment to §441.5 substitutes the words "applicable renewal periods" for the words "current renewal period" in subsections (j) and (k); and adds a new subsection (n) which states that a copy of a certificate of completion is acceptable documentation of continuing education for that certification renewal period, if the individual has completed a commission-approved academy in the 12 months prior to his or her certification expiration date.

The TCFP has determined the amendment and new rule to be in compliance with Texas Government Code, §419.022(b).

No comments were received regarding the proposed amendments.

The amendments are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.032(b), which provides the TCFP with the authority to establish minimum qualifications relating to continuing education programs and other matters that relate to the competence and reliability of persons to assume and discharge the responsibilities of fire protection personnel, and to prescribe the means of presenting evidence of fulfillment of those qualifications.

Texas Government Code, §§419.008, 419.022, and 419.032(b) are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 19, 2005.

TRD-200504741

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Effective date: November 8, 2005

Proposal publication date: August 5, 2005

For further information, please call: (512) 239-4921



## CHAPTER 461. GENERAL ADMINISTRATION

### 37 TAC §461.4

The Texas Commission on Fire Protection (TCFP) adopts an amendment to §461.4, concerning definitions for the commission's Fire Department Emergency Funding Program, in Chapter 461, entitled General Administration. The amendment is adopted without changes to the proposed text published in the August 26, 2005, issue of the *Texas Register* (30 TexReg 4948) and will not be republished. The amendment is adopted in conjunction with adopted amendments to §§463.1, 463.3, 463.4, and 465.1, published concurrently in this issue of the *Texas Register*.

The purpose of this group of adopted amendments is to bring the commission's rules into alignment with legislation passed during the 79th Legislative Session requiring applicants for program funds to participate in the Texas Fire Incident Reporting System (TEXFIRS) and the National Incident Management System (NIMS). NIMS, along with the National Response Plan (NRP), specifies how the resources of the federal government will work in concert with state, local, and tribal governments and the private sector to respond to incidents of national significance, providing a nationwide template for working together to prevent, respond to, minimize the damage, and recover from terrorist attacks, major disasters, and other emergencies.

The amendment to §461.4 clarifies to which chapters the definitions apply, updates the name of a commission division, adds a definition for NIMS, and renumbers other definitions.

No comments were received on the proposed amendment.

The amendment is adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.053, which provides the TCFP with the authority to adopt rules to administer the Fire Department Emergency Program; and Texas Government Code, §419.063, which provides the TCFP with the authority to limit the awarding of scholarships, grants, loans, and other financial assistance according to statutorily mandated criteria.

Texas Government Code, §§419.008, 419.053, and 419.063 are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 17, 2005.

TRD-200504649





## CHAPTER 463. APPLICATION CRITERIA

### 37 TAC §§463.1, 463.3, 463.4

The Texas Commission on Fire Protection (TCFP) adopts amendments to §§463.1, 463.3, and 463.4, concerning the application process, application form, and competitive needs criteria for the commission's Fire Department Emergency Funding Program, in Chapter 463, entitled Application Criteria. The amendments to §463.1 and §463.3 are adopted without changes to the proposed text published in the August 26, 2005, issue of the *Texas Register* (30 TexReg 4949) and will not be republished. The amendment to §463.4 is adopted with changes to the proposed text. The non-substantive change is in subsection (a)(5) and consists of the spelling out of the acronym for FEMA by adding the words "Federal Emergency Management Agency." The amendments are adopted in conjunction with adopted amendments to §461.4 and §465.1, published concurrently in this issue of the *Texas Register*.

The purpose of the amendments is to bring the commission's rules into alignment with legislation passed during the 79th Legislative Session requiring applicants for program funds to participate in the Texas Fire Incident Reporting System (TEXFIRS) and the National Incident Management System (NIMS). NIMS, along with the National Response Plan (NRP), specifies how the resources of the federal government will work in concert with state, local, and tribal governments and the private sector to respond to incidents of national significance, providing a nationwide template for working together to prevent, respond to, minimize the damage, and recover from terrorist attacks, major disasters, and other emergencies.

The amendment to §463.1, Application Process, deletes the requirement that each application be verified under oath by the applicant. The amendment to §463.3, Application Form, adds NIMS participation to the list of information collected from every applicant to identify their organization, and to compile comparative selection criteria and loan eligibility criteria. The amendment to §463.4, Competitive Needs Criteria, adds language in subparagraph (a)(5) to reflect the new statutory mandate in Texas Government Code, §419.063(d), that an applicant must routinely and consistently report incidents to the Texas Fire Incident Reporting System and participate in NIMS in accordance with the Federal Emergency Management Agency (FEMA) timeline; and that an applicant shall furnish sufficient proof of the required reporting when an application for financial assistance is submitted.

No comments were received regarding the proposed amendments.

The amendments are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.053, which provides the TCFP with the authority to adopt rules to administer the Fire Department Emergency Program; and Texas Government Code, §419.063, which provides the TCFP with the authority to limit the awarding of

scholarships, grants, loans, and other financial assistance according to statutorily mandated criteria.

Texas Government Code, §§419.008, 419.053, and 419.063 are affected by this rulemaking.

#### §463.4. *Competitive Needs Criteria.*

(a) All applications must meet the following minimum standards.

(1) Applicants must train its members on a regular basis (at least monthly).

(2) Training provided must be approved under §465.3 of this title (relating to Education and Training Standards).

(3) Applicants must have at least 10 volunteer and/or paid personnel active in the organization.

(4) Applicants must provide fire protection services and/or fire fighting education and training.

(5) Applicants must routinely and consistently report incidents to the TEXFIRS system, and adopt and utilize NIMS in accordance with the Federal Emergency Management Agency (FEMA) timeline. The applicant shall furnish sufficient proof of the required reporting to the commission at the time the application is submitted.

(6) Except for applicants for scholarships, all applicants must participate in a training certification program approved by the Texas Commission on Fire Protection at the time of application. Participation in a training certification program means:

(A) participation by a majority of a department's members in an approved training program as identified in §465.3 of this title (relating to Education and Training Standards); or

(B) current certification of the department as a commission approved training facility that conducts at least 48 hours of drills each calendar year attended by a majority of members; or

(C) current certification by the commission of at least 10 members with current continuing education.

(b) All applications for assistance will be competitively evaluated based on a comparison of the applications being considered for funding during a given meeting using one or more of the following criteria:

(1) ratio of fire response to fire apparatus. Priority will be given to those with highest ratios;

(2) ratio of matching funds offered by applicant to amount of assistance requested. Priority will be given to those with highest ratios;

(3) ratio of taxing authority contributions for fire service to fire response activity;

(4) ratio of existing debt to income. Priority will be given to those with the highest ratio;

(5) amount of approved protective clothing and equipment compared to number of personnel and fire responses.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 17, 2005.

TRD-200504650

Gary L. Warren, Sr.  
Executive Director  
Texas Commission on Fire Protection  
Effective date: November 6, 2005  
Proposal publication date: August 26, 2005  
For further information, please call: (512) 239-4921



## CHAPTER 465. EQUIPMENT, FACILITIES, AND TRAINING STANDARDS

### 37 TAC §465.1

The Texas Commission on Fire Protection (TCFP) adopts an amendment §465.1, concerning equipment standards for the commission's Fire Department Emergency Funding Program, in Chapter 465, entitled Equipment, Facilities, and Training Standards. The amendment is adopted without changes to the proposed text published in the August 26, 2005, issue of the *Texas Register* (30 TexReg 4950) and will not be republished. The amendment is adopted in conjunction with adopted amendments to §§461.4, 463.1, 463.3, and 463.4, published concurrently in this issue of the *Texas Register*.

The purpose of this group of amendments is to bring the commission's rules into alignment with legislation passed during the 79th Legislative Session requiring applicants for program funds to participate in the Texas Fire Incident Reporting System (TEX-FIRS) and the National Incident Management System (NIMS). NIMS, along with the National Response Plan (NRP), specifies how the resources of the federal government will work in concert with state, local, and tribal governments and the private sector to respond to incidents of national significance, providing a nationwide template for working together to prevent, respond to, minimize the damage, and recover from terrorist attacks, major disasters, and other emergencies.

The amendment to §465.1, Equipment Standards, deletes in subsection (a) an obsolete standard (Key Rate) from the list of standards that equipment purchased by an applicant must meet or exceed.

No comments were received on the proposed amendment.

The amendment is adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.053, which provides the TCFP with the authority to adopt rules to administer the Fire Department Emergency Program; and Texas Government Code, §419.063, which provides the TCFP with the authority to limit the awarding of scholarships, grants, loans, and other financial assistance according to statutorily mandated criteria.

Texas Government Code, §§419.008, 419.053, and 419.063 are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 17, 2005.

TRD-200504651  
Gary L. Warren, Sr.  
Executive Director  
Texas Commission on Fire Protection  
Effective date: November 6, 2005  
Proposal publication date: August 26, 2005  
For further information, please call: (512) 239-4921



# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

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## Adopted Rule Review

Finance Commission of Texas

### Title 7, Part 1

The Finance Commission of Texas (commission) has completed the review of Texas Administrative Code, Title 7, Chapter 9 (Rules of Procedure for Contested Case Hearings, Appeals, and Rulemaking), specifically Subchapter A, comprised of §§9.1 - 9.3, concerning General Matters; Subchapter B, comprised of §§9.11 - 9.39, concerning Contested Case Hearings; Subchapter C, comprised of §§9.51 - 9.57, concerning Appeals to Finance Commission; Subchapter D, comprised of §§9.71 - 9.72, concerning Court Appeals; and Subchapter E, comprised of §§9.81 - 9.84, concerning Rulemaking.

Notice of the review of this Chapter was published in the July 8, 2005, issue of the *Texas Register* (30 TexReg 4017). No comments were received in response to the notice. The commission believes that the reasons for the initial adoption of Chapter 9 continue to exist and readopts these sections without changes in accordance with the requirements of Government Code, §2001.039.

TRD-200504753

Everette D. Jobe

Certifying Official

Finance Commission of Texas

Filed: October 21, 2005

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# TABLES & GRAPHICS

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Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

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Figure: 7 TAC §1.1253(a)(2)

## NOTIFICACIÓN DE CRÉDITO AL CONSUMIDOR (Préstamo a Plazos)

<b>"ANNUAL PERCENTAGE RATE" -- TASA PORCENTUAL ANUAL</b>  "The cost of my credit as a yearly rate" -- El costo de mi crédito expresado como tasa anual  <div style="text-align: right;">_____ %</div>	<b>"FINANCE CHARGE" -- CARGO POR FINANCIAMIENTO</b>  "The dollar amount the credit will cost me" -- La cantidad en dólares que me costará el crédito  <div style="text-align: right;">\$ _____</div>	<b>"Amount Financed" -- Cantidad Financiada</b>  "The amount of credit provided to me or on my behalf" -- La cantidad de crédito otorgada a mi o en mi nombre  <div style="text-align: right;">\$ _____</div>	<b>"Total of Payments" -- Total de Pagos</b>  "The amount I will have paid after I have made all payments as scheduled" -- La cantidad que habré pagado después de haber efectuado todos los pagos de acuerdo al plan  <div style="text-align: right;">\$ _____</div>
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### ITEMIZATION OF THE AMOUNT FINANCED

I have the right to receive at this time an itemization of the Amount Financed.

☐ I want an itemization.                      ☐ I do not want an itemization.

### DETALLE DEL CARGO POR FINANCIAMIENTO

Tengo el derecho a recibir el detalle del Cargo por Financiamiento ahora.

☐ Deseo el detalle.                                      ☐ No deseo el detalle.

My Payment Schedule will be -- Mi Plan de Pagos será		
Number of Payments -- Número de Pagos	Amount of Payments -- Cantidad de Cada Pago	When Payments are Due -- Cuando se Vence Cada Pago

Credit life insurance, credit disability insurance, involuntary unemployment insurance, and the gap waiver agreement are not required to obtain credit, and will not be provided unless I sign and agree to pay the additional cost.

-- Seguro de vida para el Deudor, seguro de incapacidad para el Deudor, seguro de desempleo involuntario, y acuerdo de seguro gap no se requieren para obtener crédito, y no se proveerá a menos que firme y acuerde pagar el costo adicional.

Type -- Tipo	Premium -- Prima	Signature -- Firma
Credit Life -- Seguro de Vida para el Deudor	\$ _____	I want Credit Life Insurance -- Deseo Seguro de Vida para el Deudor _____ Signature -- Firma
Credit Disability -- Seguro de Discapacidad para el Deudor	\$ _____	I want Credit Disability Insurance -- Deseo Seguro de Discapacidad para el Deudor _____ Signature -- Firma
Involuntary Unemployment Insurance -- Seguro de Desempleo Involuntario	\$ _____	I want Involuntary Unemployment Insurance -- Deseo Seguro de Desempleo Involuntario _____ Signature -- Firma
Gap Waiver Agreement -- Acuerdo de Abandono de Seguro Gap	\$ _____	I want Gap Waiver Agreement -- Deseo Acuerdo de Abandono de Seguro Gap _____ Signature -- Firma

I may obtain property insurance from anyone I want that is acceptable to you. If I get the insurance from you, I will pay \$\_\_\_\_\_ for the term of \_\_\_\_\_.

Puedo obtener seguro de propiedad de quien yo desee si es aceptable para Usted. Si obtengo el seguro de Usted, pagare \$\_\_\_\_\_ por un plazo de \_\_\_\_\_.

Security: You will have a security interest in the following described collateral \_\_\_\_\_.

Garantía: Como garantía Usted tendrá parte (participación) en el siguiente colateral aquí descrito \_\_\_\_\_.

Filing Fees \$\_\_\_\_\_ Non-filing insurance \$\_\_\_\_\_

Coutas por Inscripción \$\_\_\_\_\_ Seguro de no-inscripción \$\_\_\_\_\_

Late Charge: If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.

Cargos por Retrasos: Si cualquier parte de un pago queda sin pagar por 10 días después de vencerse, a mí se me puede cobrar el 5% de la cantidad del pago.

Prepayment: If I payoff early, I

☐ may ☐ will not have to pay a penalty.

☐ may ☐ will not be entitled to a refund of part of the Finance Charge.

Pago por Adelantado: Si pago por adelantado,

☐ tendría que ☐ no tendré que pagar una penalización.

☐ tendría ☐ no tendré derecho a un reembolso de parte del Cargo por Financiamiento.

Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

Información Adicional: Ver los documentos del contrato para información adicional sobre no-pago, retraso, cualquier re-pago total requerido antes de la fecha de vencimiento, y reembolsos y penalizaciones por pagar por adelantado.

Figure: 7 TAC §1.1253(a)(3)(A)

## NOTIFICACIÓN DE CRÉDITO AL CONSUMIDOR (Préstamo)

"ANNUAL PERCENTAGE RATE" -- TASA PORCENTUAL ANUAL	"FINANCE CHARGE" -- CARGO POR FINANCIAMIENTO	"Amount Financed" -- Cantidad Financiada	"Total of Payments" -- Total de Pagos
_____ %	\$ _____	\$ _____	\$ _____

My Payment Schedule will be -- Mi Plan de Pagos será		
Number of Payments -- Número de Pagos	Amount of Payments -- Cantidad de Cada Pago	When Payments are Due -- Cuando se Vence Cada Pago

Security: You will have a security interest in the following described collateral \_\_\_\_\_.

Garantía: Como garantía Usted tendrá parte (participación) en el siguiente colateral aquí descrito \_\_\_\_\_.

Late Charge Option 1

Late Charge: If I don't pay an entire payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment.

Cargos por Retrasos: Si no doy un pago completo dentro de 10 días después de vencerse, me puedes cobrar un cargo por retraso. El cargo por retraso será el 5% de la cantidad del pago.

Late Charge Option 2

Late Charge: For a loan that has an amount financed of less than \$100, the late charge for a payment that is unpaid for 10 days after it is due is 5% of the amount of the installment. For a loan that has an amount financed of \$100 or more, the late charge for a payment that is unpaid for 10 days after it is due is the greater of \$10 or 5% of the amount of the installment.

Cargos por Retrasos: Para un préstamo en el cual la cantidad financiada es menor de \$100, el cargo por retraso en un pago que no se liquida por 10 días después de vencerse es 5% de la cantidad del pago. Para un préstamo en el cual la cantidad financiada es de \$100 o más, el cargo por retraso en un pago que no se liquida por 10 días después de vencerse es de \$10 o 5% de la cantidad del pago atrasado, lo que sea mayor.

Figure: 7 TAC §1.1253(a)(3)(B)

## CONCEPTOS FINANCIEROS

ITEMIZATION OF THE FINANCE CHARGE -- DETALLE DEL CARGO POR FINANCIAMIENTO	
Acquisition Charge -- Cargo por Adquisición	
Installment Account Handling Charge -- Cargo por Manejo de Cuenta	
ITEMIZATION OF THE AMOUNT FINANCED -- DETALLE DE LA CANTIDAD FINANCIADA	
Previous Account --	Cuenta Anterior
Late Charge on Previous Account --	Cargo por Retrasos en la Cuenta Anterior
Previous Balance --	Saldo Anterior
Less Refund --	Menos Reembolso
Net Balance Renewed --	Saldo Neto Renovado
Cash to Me --	Efectivo entregado a mi
Amount Financed --	Cantidad Financiada

"ANNUAL PERCENTAGE RATE" (TASA PORCENTUAL ANNUAL)	--	"The cost of my credit as a yearly rate" (El costo de mi crédito expresado como tasa anual)
"FINANCE CHARGE" (CARGO POR FINANCIAMIENTO)	--	"The dollar amount the credit will cost me" (La cantidad en dólares que me costara el crédito)
"Amount Financed" (Cantidad Financiada)	--	"The amount of credit provided to me or on my behalf" (La cantidad de crédito otorgada a mi o en mi nombre)
"Total of Payments" (Total de Pagos)	--	"The amount I will have paid after I have made all payments as scheduled" (La cantidad que habré pagado después de haber efectuado todos los pagos de acuerdo al plan)

Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

Información Adicional: Ver los documentos del contrato para información adicional sobre no-pago, retraso, cualquier re-pago total requerido antes de la fecha de vencimiento, y reembolsos y penalizaciones por pagar por adelantado.



Figure: 7 TAC §1.1253(a)(4)

## NOTIFICACIÓN DE CRÉDITO AL CONSUMIDOR (Préstamo de Segunda Hipoteca)

<b>"ANNUAL PERCENTAGE RATE" -- TASA PORCENTUAL ANUAL</b>  "The cost of my credit as a yearly rate" -- El costo de mi crédito expresado como tasa anual  <div style="text-align: right;">_____ %</div>	<b>"FINANCE CHARGE" -- CARGO POR FINANCIAMIENTO</b>  "The dollar amount the credit will cost me" -- La cantidad en dólares que me costará el crédito  <div style="text-align: right;">\$ _____</div>	<b>"Amount Financed" -- Cantidad Financiada</b>  "The amount of credit provided to me or on my behalf" -- La cantidad de crédito otorgada a mi o en mi nombre  <div style="text-align: right;">\$ _____</div>	<b>"Total of Payments" -- Total de Pagos</b>  "The amount I will have paid after I have made all payments as scheduled" -- La cantidad que habré pagado después de haber efectuado todos los pagos de acuerdo al plan  <div style="text-align: right;">\$ _____</div>
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### ITEMIZATION OF THE AMOUNT FINANCED

I have the right to receive at this time an itemization of the Amount Financed.

☐ I want an itemization.                      ☐ I do not want an itemization.

### DETALLE DEL CARGO POR FINANCIAMIENTO

Tengo el derecho a recibir el detalle del Cargo por Financiamiento ahora.

☐ Deseo el detalle.                                      ☐ No deseo el detalle.

My Payment Schedule will be -- Mi Plan de Pagos será		
Number of Payments -- Número de Pagos	Amount of Payments -- Cantidad de Cada Pago	When Payments are Due -- Cuando se Vence Cada Pago

Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless I sign and agree to pay the additional cost.

Seguro de vida para el Deudor y seguro de incapacidad para el Deudor no se requieren para obtener crédito, y no se proveerá a menos que firme y acuerde pagar el costo adicional.

Type -- Tipo	Premium -- Prima	Signature -- Firma
Credit Life -- Seguro de Vida para el Deudor	\$ _____	I want Credit Life Insurance -- Deseo Seguro de Vida para el Deudor _____ Signature -- Firma
Credit Disability -- Seguro de Incapacidad para el Deudor	\$ _____	I want Credit Disability Insurance -- Deseo Seguro de Incapacidad para el Deudor _____ Signature -- Firma

I may obtain property insurance from anyone I want that is acceptable to you. If I get the insurance from you, I will pay \$ \_\_\_\_\_ for the term of \_\_\_\_\_.

Puedo obtener seguro de propiedad de quien yo desee si es aceptable para Usted. Si obtengo el seguro de Usted, pagaré \$ \_\_\_\_\_ por un plazo de \_\_\_\_\_.

Security: You will have a security interest in my homestead.

Garantía: Como garantía Usted tendrá parte (participación) en mi residencia.

Filing Fees \$\_\_\_\_\_

Coutas por Inscripción \$\_\_\_\_\_

Late Charge: If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.

Cargos por Retrasos: Si cualquier parte de un pago queda sin pagar por 10 días después de vencerse, a mi se me puede cobrar el 5% de la cantidad del pago.

Prepayment: If I payoff early, I

☐ may ☐ will not have to pay a penalty.

☐ may ☐ will not be entitled to a refund of part of the Finance Charge.

Pago por Adelantado: Si pago por adelantado,

☐ tendria que ☐ no tendré que pagar una penalización.

☐ tendría ☐ no tendré derecho a un reembolso de parte del Cargo por Financiamiento.

Assumption: Someone buying my house may, subject to conditions, be allowed to assume the remainder of the mortgage on the original terms.

Asunción: Alguien que compre mi propiedad puede, sujeto a ciertas condiciones, asumir el saldo de la hipoteca bajo los términos originales.

Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

Información Adicional: Vea los documentos del contrato para información adicional sobre no-pago, retraso, cualquier re-pago total requerido antes de la fecha de vencimiento, y reembolsos y penalizaciones por pagar por adelantado.

Figure: 7 TAC §1.1253(a)(5)

## NOTIFICACIÓN DE CRÉDITO AL CONSUMIDOR (Contrato de Menudeo a Plazos para Vehículo Automotor)

<b>"ANNUAL PERCENTAGE RATE" -- TASA PORCENTUAL ANUAL</b>  "The cost of my credit as a yearly rate" -- El costo de mi crédito expresado como tasa anual  _____ %	<b>"FINANCE CHARGE" -- CARGO POR FINANCIAMIENTO</b>  "The dollar amount the credit will cost me" -- La cantidad en dólares que me costará el crédito  \$ _____	<b>"Amount Financed" -- Cantidad Financiada</b>  "The amount of credit provided to me or on my behalf" -- La cantidad de crédito otorgada a mi o en mi nombre  \$ _____	<b>"Total of Payments" -- Total de Pagos</b>  "The amount I will have paid after I have made all payments as scheduled" -- La cantidad que habré pagado después de haber efectuado todos los pagos de acuerdo al plan  \$ _____	<b>"Total Sale Price" -- Precio de Venta Total</b>  "The total cost of my purchase on credit, including down payment of" -- El costo total de mi compra a crédito, incluyendo un enganche de  \$ _____
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### ITEMIZATION OF THE AMOUNT FINANCED

I have the right to receive at this time an itemization of the Amount Financed.

☐ I want an itemization.      ☐ I do not want an itemization.

### DETALLE DEL CARGO POR FINANCIAMIENTO

Tengo el derecho a recibir el detalle del Cargo por Financiamiento ahora.

☐ Deseo el detalle.      ☐ No deseo el detalle.

My Payment Schedule will be -- Mi Plan de Pagos será		
Number of Payments -- Número de Pagos	Amount of Payments -- Cantidad de Cada Pago	When Payments are Due -- Cuando se Vence Cada Pago

Credit life insurance, credit disability insurance, and gap insurance are not required to obtain credit, and will not be provided unless I sign and agree to pay the additional cost.

Seguro de vida para el Deudor, seguro de incapacidad para el Deudor, y acuerdo de seguro gap no se requieren para obtener crédito, y no se proveerá a menos que firme y acuerde pagar el costo adicional.

Type -- Tipo	Premium -- Prima	Signature -- Firma
Credit Life -- Seguro de Vida para el Deudor	\$ _____	I want Credit Life Insurance -- Deseo Seguro de Vida para el Deudor  _____ Signature -- Firma
Credit Disability -- Seguro de Discapacidad para el Deudor	\$ _____	I want Credit Disability Insurance -- Deseo Seguro de Discapacidad para el Deudor  _____ Signature -- Firma
Gap Insurance -- Seguro Gap	\$ _____	I want Gap Insurance -- Deseo Seguro Gap  _____ Signature -- Firma

I may obtain property insurance from anyone I want that is acceptable to you. If I get the insurance from you, I will pay \$ \_\_\_\_\_ for the term of \_\_\_\_\_.

Puedo obtener seguro de propiedad de quien yo desee si es aceptable para Usted. Si obtengo el seguro de Usted, pagaré \$ \_\_\_\_\_ por un plazo de \_\_\_\_\_.

Security: You will have a security interest in the motor vehicle being purchased.

Garantía: Como garantía Usted tendrá parte (participación) en el vehículo automotor que está comprando.

Filing Fees \$ \_\_\_\_\_

Coutas por Inscripción \$ \_\_\_\_\_

Late Charge: **[True daily earnings:]** (Option A:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of \_\_\_\_\_% per year on the past due amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option B:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of \_\_\_\_\_% of the scheduled payment.

Cargo por Retraso: **[Ganancia Diaria Real:]** (Opción A:) Si no recibes mi pago completo dentro de 15 días después de vencerse (10 días si estoy comprando un vehículo comercial de carga pesada), pagaré un cargo por retraso con tasa del \_\_\_\_\_% anual sobre la cantidad del pago atrasado. El cargo por retraso sobre la cantidad del pago atrasado se calculará desde la fecha de vencimiento del pago hasta la fecha en que se realice el pago. (Opción B:) Si no recibes mi pago completo dentro de 15 días después de vencerse, (10 días si estoy comprando un vehículo comercial de carga pesada), pagaré un cargo por retraso de \_\_\_\_\_% anual del pago programado.

**[Scheduled Installment Earnings Method or sum of the periodic balances:]** (Option A:) If I do not pay my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge on the past due amount at the contract rate. (Option B:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of \_\_\_\_\_% per year on the late amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option C:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of \_\_\_\_\_% of the scheduled payment.

**[Método de Ganancia de Pagos Programados o suma de los saldos periódicos:]** (Opción A:) Si no recibes mi pago completo dentro de 15 días después de vencerse, (10 días si estoy comprando un vehículo comercial de carga pesada), pagaré un cargo sobre la cantidad del pago atrasado basado en la tasa del contrato. (Opción B:) Si no recibes mi pago completo dentro de 15 días después de vencerse, (10 días si estoy comprando un vehículo comercial de carga pesada), pagaré un cargo por retraso con tasa del \_\_\_\_\_% anual sobre la cantidad atrasada. (Opción C:) Si no recibes mi pago completo dentro de 15 días después de vencerse, (10 días si estoy comprando un vehículo comercial de carga pesada), pagaré un cargo por retraso de \_\_\_\_\_% de la cantidad del pago programado.

Prepayment: If I payoff early, I

☐ may ☐ will not have to pay a penalty.

☐ may ☐ will not be entitled to a refund of part of the Finance Charge.

Pago por Adelantado: Si pago por adelantado,

☐ tendría que ☐ no tendré que pagar una penalización.

☐ tendría ☐ no tendré derecho a un reembolso de parte del Cargo por Financiamiento.

Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

Información Adicional: Ver los documentos del contrato para información adicional sobre no-pago, retraso, cualquier re-pago total requerido antes de la fecha de vencimiento, y reembolsos y penalizaciones por pagar por adelantado.

Figure: 10 TAC §80.208(d)

Texas Department of Housing and Community Affairs

MANUFACTURED HOUSING DIVISION

P. O. BOX 12489 Austin, Texas 78711-2489

(800) 500-7074, (512) 475-2200 FAX (512) 475-1109

Pursuant to the Texas Manufactured Housing Standards Act, Chapter 1201 of the Occupations Code

Internet Address: [www.idhca.state.tx.us/mh/index.htm](http://www.idhca.state.tx.us/mh/index.htm)

<b>TAX LIEN RECORD/RELEASE</b>	
<i>Please type or print clearly.</i>	
<b>BLOCK 1: Required Information</b>	
<b>HUD Label or Texas Seal #:</b> _____	<b>OR Serial #:</b> _____ <b>Tax Roll Account #:</b> _____ <b>Complete 8-Digit Taxing Unit ID #:</b> _____ <b>County Code (3 digits):</b> _____ <b>County Name:</b> _____ <b>Year for which taxes are owed:</b> _____ <b>Taxpayer Name:</b> _____ <div style="text-align: right; font-size: small;">(Name)</div> <b>Taxpayer Address:</b> _____ <div style="text-align: right; font-size: small;">(Address)</div> <div style="text-align: right; font-size: small;">(City) (State) (Zip Code)</div> <b>Collector's Name &amp; Name of Taxing Entity:</b> _____ <b>Collector's Address:</b> _____ <div style="text-align: right; font-size: small;">(Address)</div> <div style="text-align: right; font-size: small;">(City) (State) (Zip Code)</div> <b>Collector's Phone #:</b> (    ) _____
<b>BLOCK 2: Signature Required for Tax Lien Recording</b>	
I hereby certify that the lien being RECORDED with this form is in accordance with all applicable provisions of the Tax Code.	
<div style="display: flex; justify-content: space-between;"> <div>_____</div> <div>_____</div> </div> <div style="display: flex; justify-content: space-between; font-size: small;"> <div>(Collector's Signature)</div> <div>(Date)</div> </div>	
<b>BLOCK 3: Signature Required for Tax Lien Release</b>	
I hereby certify that the lien being RELEASED with this form has been discharged and should be removed from the records of the Texas Department of Housing and Community Affairs.	
<div style="display: flex; justify-content: space-between;"> <div>_____</div> <div>_____</div> </div> <div style="display: flex; justify-content: space-between; font-size: small;"> <div>(Collector's Signature)</div> <div>(Date)</div> </div>	
<b>Department Use Only</b>	
<b>Filing Recorded Date:</b> _____	<b>Filing NOT Recorded because:</b> <input type="checkbox"/> No record found with the manufactured home ID#(s) provided. <input type="checkbox"/> No manufactured home ID#(s) provided. <input type="checkbox"/> Our records indicate that this home is real property. No lien can be recorded. <input type="checkbox"/> Received after the filing deadline. <input type="checkbox"/> Tax year was not provided. <input type="checkbox"/> Taxing unit ID# is missing or incomplete. <input type="checkbox"/> No signature was provided.

## **NOTICE CONCERNING COMPLAINTS**

Complaints about physicians, as well as other licensees and registrants of the Texas Medical Board, including physician assistants, acupuncturists, and surgical assistants may be reported for investigation at the following address:

**Texas Medical Board  
Attention: Investigations  
333 Guadalupe, Tower 3, Suite 610  
P.O. Box 2018, MC-263  
Austin, Texas 78768-2018**

Assistance in filing a complaint is available by calling the following telephone number:

**1-800-201-9353**

For more information please visit our website at

**[www.tmb.state.tx.us](http://www.tmb.state.tx.us)**

## **AVISO SOBRE LAS QUEJAS**

Las quejas sobre médicos, así como sobre otros profesionales acreditados e inscritos en la Junta de Examinadores Médicos del Estado de Texas, incluyendo asistentes de médicos, practicantes de acupuntura y asistentes de cirugía, se pueden presentar en la siguiente dirección para ser investigadas:

**Texas Medical Board  
Attention: Investigations  
333 Guadalupe, Tower 3, Suite 610  
P.O. Box 2018, MC-263  
Austin, Texas 78768-2018**

Si necesita ayuda para presentar una queja, llame al:

**1-800-201-9353**

Para obtener más información, visite nuestro sitio web en

**[www.tmb.state.tx.us](http://www.tmb.state.tx.us)**

Figure: 22 TAC §577.15

(a) EXAMINATIONS	FEE		
Texas State Board Licensing Exam (SBE)	\$155		
Special License	\$155		
(b) APPLICATION PROCESSING (except for Provisional License)	\$50		
(c) RENEWALS	BOARD FEE	PROF. FEE	TOTAL FEE
License Renewal (current)	\$123	\$200	\$323
Delinquent Renewals (90 days or less)	\$185	\$200	\$385
Delinquent Renewals (over 90 days but less than one year)	\$246	\$200	\$446
Inactive Renewals	\$123	\$0	\$123
Delinquent Inactive Renewal (90 days or less)	\$185	\$0	\$185
Delinquent Inactive Renewals (over 90 days but less than one year)	\$246	\$0	\$246
Special License	\$118	\$200	\$318
Delinquent Special License Renewals (90 days or less)	\$177	\$200	\$377
Delinquent Special License Renewals (over 90 days but less than one year)	\$236	\$200	\$436
(d) PROVISIONAL LICENSE	\$255	\$0	\$255
(e) OPEN RECORDS			
Charges for all open records and other goods/services such as tapes, disks, will be in accordance with Texas Building And Procurement Commission §§111.61 - 111.71—"Charges for Public Records"			
(f) RETURNED CHECK FEE	\$25		



Figure: 28 TAC §34.524(h)

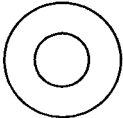
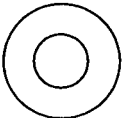
				
<b>DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL</b>		<b>SYSTEM DOES NOT COMPLY WITH STANDARD UL 300.</b>		
<b>SYSTEM DOES NOT COMPLY WITH STANDARD UL 300. SYSTEM MAY NOT EXTINGUISH A TYPICAL FIRE.</b>	<i>Name &amp; Address and Phone No. of Extinguisher Firm</i>	<p>This fire protection system may have met the nationally recognized testing requirements at the time it was installed. However recent changes to modern cooking appliances and/or the cooking media may prevent the fire protection system from extinguishing a typical fire. Since this system was not tested according to Underwriter's Laboratories test Standard UL 300 it will be red tagged after January 1, 2008. The owner should consider replacing or upgrading the system before that time.</p>		
	<hr/> Certificate of Registration Number			
	<hr/> Name of Licensee			
	<hr/> License Number			
	<hr/> Signature			
	<b>TYPE OF WORK</b> <input type="checkbox"/> Maintenance <input type="checkbox"/> Service			
	<b>DATE MARKED IS DATE OF LAST SERVICE</b>			
	<hr/> Name of owner or occupant			
	<hr/> Address			
	<hr/> List Services			
<hr/>				

Figure: 28 TAC §34.619(d)

<input type="checkbox"/> <b>FOR SUBMITTAL</b> <input type="checkbox"/> <b>RECORD DRAWINGS</b>	
I have reviewed these plans and <input type="checkbox"/> certify that they comply with the applicable codes and standards; Or <input type="checkbox"/> certify they were copied from sealed engineering plans and any violations of the applicable codes or standards are specifically noted on these plans.	
<i>Registered Firm's Name</i> <i>Street Address</i> <i>City, State, Zip</i> <i>Phone Number   ACR- (number)</i>	
APS Licensee Signature   -   License #	
APS Printed name	Date

Figure: 28 TAC §34.620(e)

<b>DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL</b> (for life of system) COMMERCIAL or non-1-or-2 family residence fire detection and fire alarm devices or system <b>INSTALLATION RECORD</b> (Post inside panel)	
<i>Registered Firm's Name</i> <i>Street Address</i> <i>City, State, Zip</i> <i>Phone Number   ACR- (number)</i>	
Installation Date   -   Licensee Signature   -   License #	
Alarm Planning Superintendent (printed name)- License # or Professional Engineer's name and License Number copied from record drawings used to install the system.	

Figure: 28 TAC §34.620(g)

<p><b>DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL</b> (for life of system) 1 or 2 family fire alarm/detection devices or system <b>INSTALLATION RECORD</b> (Post inside panel or if no panel in a permanent location)</p> <p><i>Registered Firm's Name</i> <i>Street Address</i> <i>City, State, Zip</i> <i>Phone Number</i>    <b>ACR-</b> (number)</p> <hr/> <p>Installation Date    -    Licensee Signature    -    License #</p> <p>I hereby certify, on behalf of the registered firm, that the fire alarm equipment or system has been tested and complies with the requirements of the Texas Insurance Code Art. 5.43-2, the Fire Alarm Rules, the adopted codes and standards, and the manufacturer's requirements.</p>
--

Figure: 28 TAC §34.621(i)

<p><b>DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL</b> (for at least two years) <b>SERVICE RECORD</b></p> <p><i>Registered Firm's Name</i> <i>Street Address</i>    <i>City, State, Zip</i> <i>Phone Number</i>    <b>ACR-</b> (number)</p> <hr/> <p>Date    -    Licensee Signature    -    License #</p> <p>List Services: _____</p> <hr/> <p>Performed <input type="checkbox"/> General service listed above Corrected <input type="checkbox"/> RED label dated _____ Corrected <input type="checkbox"/> YELLOW label dated _____</p>
--

Figure: 28 TAC §34.622(i)

<b>DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL</b> (for at least five years) <b>INSPECTION/TEST RECORD</b>		
<i>Registered Firm's Name</i> <i>Street Address</i> <i>City, State, Zip</i> <i>Phone Number</i> <b>ACR-</b> <i>(number)</i>		
Date	-	Licensee Signature    -    License #
<i>Type of Inspection/Test Performed - NFPA 72</i>		
<input type="checkbox"/> New Installation	<input type="checkbox"/> Quarterly	
<input type="checkbox"/> Semi Annual	<input type="checkbox"/> Annual	
Last Date of Sensitivity Test, if known _____		
<i>Status After Inspection/Test</i>		
<input type="checkbox"/> Acceptable	<input type="checkbox"/> Yellow Label (attached)	<input type="checkbox"/> Red Label (attached)

Figure: 28 TAC §34.623(h)

<b>DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL</b> (until all conditions are corrected) <b>SYSTEM DOES NOT COMPLY WITH APPLICABLE CODES &amp; STANDARDS</b> (at the time the system was installed)		
<i>Registered Firm's Name</i> <i>Street Address</i> <i>City, State, Zip</i> <i>Phone Number</i> <b>ACR-</b> <i>(number)</i>		
Date	-	Licensee Signature    -    License #
List Conditions: _____		
<b>REPORT STATUS TO OWNER &amp; AHJ</b> (in writing within 5 business days)		

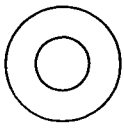
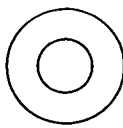
Figure: 28 TAC §34.624(h)

<p align="center"><b>DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL</b> (until all conditions are corrected)</p> <p><input type="checkbox"/> System <b>INOPERABLE</b> <input type="checkbox"/> <b>IMPAIRED</b> or <b>FAULT</b></p> <p align="center"><i>Registered Firm's Name</i>  <i>Street Address    City, State, Zip</i>  <i>Phone Number    ACR- (number)</i></p>		
Date	-    Licensee Signature	-    License #
List Conditions/Area _____		
<p><b>REPORT INOPERABLE TO OWNER &amp; AHJ</b>          (Orally immediately &amp; in writing within next business day)  <b>REPORT ALL OTHER TO OWNER &amp; AHJ</b>          (In writing within three business days)</p>		

Figure: 28 TAC §34.717(d)

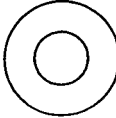
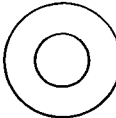
<p><b>I have reviewed these plans and certify that they comply with the adopted NFPA standards.</b></p> <p align="center"><i>Firm's name</i>  <i>Street address</i>  <i>City, State Zip Code</i>  <i>Phone Number</i>  <b>SCR – number</b></p>	
RME-Signature: _____	
Printed RME Name: _____	
RME – <i>(number)</i> _____	Date: _____
<input type="checkbox"/> <b>AS-BUILT</b> <input type="checkbox"/> <b>SUBMITTAL</b> <input type="checkbox"/> <b>OTHER</b>	

Figure: 28 TAC §34.718(h)

 <b>DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL</b>																																																																																																
<table border="1" style="width: 100%; border-collapse: collapse; text-align: center;"> <tr><td>1</td><td>2</td><td>3</td><td>4</td><td>5</td><td>6</td><td>7</td><td>8</td><td>9</td><td>10</td><td>11</td><td>12</td><td>13</td><td>14</td><td>15</td></tr> <tr><td>16</td><td>17</td><td>18</td><td>19</td><td>20</td><td>21</td><td>22</td><td>23</td><td>24</td><td>25</td><td>26</td><td>27</td><td>28</td><td>29</td><td>30</td></tr> <tr><td>31</td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr> </table>	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31															<p style="text-align: center;"><b>ORIGINAL INSTALLATION TAG</b></p> <p style="text-align: center;"><i>Name &amp; Address of Sprinkler Firm Phone Number SCR-Number</i></p> <p style="text-align: center;"><b>THIS TAG CONTAINS IMPORTANT INFORMATION ABOUT THIS SPRINKLER SYSTEM AND SHALL REMAIN ATTACHED TO THE SYSTEM FOR THE LIFE OF THE SYSTEM.</b></p>	<table border="1" style="width: 100%; border-collapse: collapse; text-align: center;"> <tr><td>JAN</td><td>FEB</td><td>MAR</td><td>APR</td><td>MAY</td><td>JUN</td><td>JUL</td><td>AUG</td><td>SEP</td><td>OCT</td><td>NOV</td><td>DEC</td></tr> <tr><td colspan="10"></td><td>2005</td><td>2006</td></tr> <tr><td colspan="10"></td><td>2007</td><td>2008</td></tr> <tr><td colspan="10"></td><td>2009</td><td>2010</td></tr> </table>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC											2005	2006											2007	2008											2009	2010	<p>After an installation, conduct a <b>MAIN DRAIN TEST</b> at the system lead-in or riser and record the information on this tag and Contractor's Material and Test Certificate. Also copy the original flow test results, used to design the system, as noted on the plans. Then attach this tag to the lead-in or riser.</p> <hr/> <p>Name of Owner or Occupant</p> <hr/> <p>Address</p> <hr/> <p>Building No. or Location or System No.</p> <p><b>MAIN DRAIN TEST</b> at lead-in or riser</p> <p style="padding-left: 40px;">Static: _____ psi</p> <p style="padding-left: 40px;">Flowing: _____ psi</p> <p><b>WATER SUPPLY FLOW TEST</b> used to hydraulically design the system (i.e. at street)</p> <p style="padding-left: 40px;">Static: _____ psi</p> <p style="padding-left: 40px;">Residual: _____ psi</p> <p style="padding-left: 40px;">with: _____ GPM Flowing</p> <hr/> <p>Signature of Service Person _____</p>
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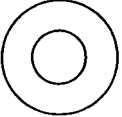
(Editor's note: Figure appears as submitted. For an electronic copy, write to Texas Department of Insurance, [chiefclerk@tdi.state.tx.us](mailto:chiefclerk@tdi.state.tx.us)).

Figure: 28 TAC §34.719(h)

 <b>DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL</b>																																																																																																																			
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<p>After any service or addition, attach this service tag to the applicable system riser. Also attach or remove a yellow or red tag if appropriate. Tags shall be retained on the riser for five years.</p> <p>Name of Owner or Occupant _____</p> <p>Address _____</p> <p>Building No. or Location or System No. _____</p> <p>List Services: _____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p><input type="checkbox"/> Corrected all <b>YELLOW</b> <b>TAG</b> conditions from tag dated _____</p> <p>_____</p> <p><input type="checkbox"/> Corrected all <b>RED TAG</b></p>																																																																																																																			

(Editor's note: Figure appears as submitted. For an electronic copy, write to Texas Department of Insurance, [chiefclerk@tdi.state.tx.us](mailto:chiefclerk@tdi.state.tx.us)).

Figure: 28 TAC §34.720(h)



**DO NOT REMOVE BY ORDER OF  
TEXAS STATE FIRE MARSHAL**

1	2
16	17
18	19
20	21
22	23
24	25
26	27
28	29
30	31

**ITM TAG**  
Inspection, Test & Maintenance Tag

**TYPE of ITM**

☐ Initial Installation

☐ Monthly

☐ Quarterly

☐ ANNUAL

☐ Third Year

☐ Fifth Year

**SYSTEM STATUS AFTER ITM**

☐ Acceptable

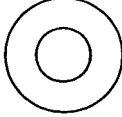
☐ Yellow Tag (attached)

☐ Red Tag (attached)

License Number after 1-2008 \_\_\_\_\_

Name of Inspector \_\_\_\_\_

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
2005	2006	2007	2008	2009	2010						



After an inspection, test and maintenance service, attach this ITM tag to the applicable system riser. Also yellow or red tag if appropriate. Tags shall be retained on the riser for five years.

*Name & Address  
of Sprinkler Firm  
Phone Number  
SCR-Number*

\_\_\_\_\_  
Name of Owner or Occupant

\_\_\_\_\_  
Address

\_\_\_\_\_  
Building No. or Location or System No.

Note: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**MAIN DRAIN TEST** at lead-in or riser



Figure: 28 TAC §34.721(g)



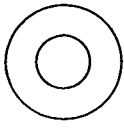
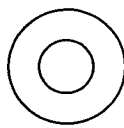
<div style="text-align: center; margin-bottom: 10px;">  </div> <p><b>DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL</b></p> <table border="1" style="width: 100%; border-collapse: collapse; margin-bottom: 10px;"> <tr> <td style="width: 20px; text-align: center;">16</td><td style="width: 20px; text-align: center;">1</td></tr> <tr> <td style="text-align: center;">17</td><td style="text-align: center;">2</td></tr> <tr> <td style="text-align: center;">18</td><td style="text-align: center;">3</td></tr> <tr> <td style="text-align: center;">19</td><td style="text-align: center;">4</td></tr> <tr> <td style="text-align: center;">20</td><td style="text-align: center;">5</td></tr> <tr> <td style="text-align: center;">21</td><td style="text-align: center;">6</td></tr> <tr> <td style="text-align: center;">22</td><td style="text-align: center;">7</td></tr> <tr> <td style="text-align: center;">23</td><td style="text-align: center;">8</td></tr> <tr> <td style="text-align: center;">24</td><td style="text-align: center;">9</td></tr> <tr> <td style="text-align: center;">25</td><td style="text-align: center;">10</td></tr> <tr> <td style="text-align: center;">26</td><td style="text-align: center;">11</td></tr> <tr> <td style="text-align: center;">27</td><td style="text-align: center;">12</td></tr> <tr> <td style="text-align: center;">28</td><td style="text-align: center;">13</td></tr> <tr> <td style="text-align: center;">29</td><td style="text-align: center;">14</td></tr> <tr> <td style="text-align: center;">30</td><td style="text-align: center;">15</td></tr> <tr> <td style="text-align: center;">31</td><td style="text-align: center;"></td></tr> </table> <div style="margin-bottom: 10px;"> <p><b>YELLOW TAG</b></p> <p><i>Name &amp; Address of Sprinkler Firm Phone Number SCR-Number</i></p> <hr/> <p>RME's License Number</p> <hr/> <p>Printed name of serviceperson / inspector</p> <hr/> <p>Signature of authorized serviceperson / inspector</p> <hr/> <p><b>REPORT STATUS TO OWNER AND AHJ IN WRITING (within 5 business days)</b></p> </div> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20px; text-align: center;">JAN</td><td style="width: 20px; text-align: center;">FEB</td><td style="width: 20px; text-align: center;">MAR</td><td style="width: 20px; text-align: center;">APR</td><td style="width: 20px; text-align: center;">MAY</td><td style="width: 20px; text-align: center;">JUN</td><td style="width: 20px; text-align: center;">JUL</td><td style="width: 20px; text-align: center;">AUG</td><td style="width: 20px; text-align: center;">SEP</td><td style="width: 20px; text-align: center;">OCT</td><td style="width: 20px; text-align: center;">NOV</td><td style="width: 20px; text-align: center;">DEC</td><td style="width: 20px; text-align: center;">2010</td></tr> <tr> <td style="text-align: center;">2005</td><td style="text-align: center;">2006</td><td style="text-align: center;">2007</td><td style="text-align: center;">2008</td><td style="text-align: center;">2009</td><td style="text-align: center;">2010</td><td style="text-align: center;">2011</td><td style="text-align: center;">2012</td><td style="text-align: center;">2013</td><td style="text-align: center;">2014</td><td style="text-align: center;">2015</td><td style="text-align: center;">2016</td><td style="text-align: center;">2017</td></tr> </table>	16	1	17	2	18	3	19	4	20	5	21	6	22	7	23	8	24	9	25	10	26	11	27	12	28	13	29	14	30	15	31		JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	2010	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017		<div style="text-align: center; margin-bottom: 10px;">  </div> <p>If the system is not compliant with the NFPA standard, at the time it was this yellow tag to the applicable system riser. An authorized individual may remove this tag after a service tag has been attached indicating the condition has been corrected.</p> <hr/> <p>Name of Owner or Occupant</p> <hr/> <p>Address</p> <hr/> <p>Building No. or Location or System No.</p> <hr/> <p>List impairments not compliant with NFPA standards:</p> <hr/> <hr/> <hr/> <hr/> <hr/>
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Figure: 28 TAC §34.722(h)

 <b>DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL</b>																																																			
<b>RED TAG</b>  <i>Name &amp; Address of Sprinkler Firm Phone Number SCR-Number</i>  <hr/> RME's License Number  <hr/> Printed name of service person  <hr/> Signature of authorized service person  <b>IMMEDIATELY REPORT STATUS TO OWNER AND AHJ (and in writing within 24 hrs)</b>		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>JAN</td><td>FEB</td><td>MAR</td><td>APR</td><td>MAY</td><td>JUN</td><td>JUL</td><td>AUG</td><td>SEP</td><td>OCT</td><td>NOV</td><td>DEC</td> </tr> <tr> <td colspan="10"></td> <td>2005</td> <td>2006</td> </tr> <tr> <td colspan="10"></td> <td>2007</td> <td>2008</td> </tr> <tr> <td colspan="10"></td> <td>2009</td> <td>2010</td> </tr> </table>		JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC											2005	2006											2007	2008											2009	2010
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# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Department of Aging and Disability Services

### Open Solicitation for Armstrong County

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 Texas Administrative Code (TAC) §19.2324(b), primary selection process, the Department of Aging and Disability Services (DADS) is announcing an open solicitation period of 30 days, effective the date of this public notice, for **Armstrong County, County #006**. Medicaid nursing facility occupancy rates in **Armstrong County** exceeded the 90% occupancy threshold for six consecutive months during the period of **April 2005 through September 2005**. The county occupancy rates for each month of that period were: **93.1%, 93.1%, 92.3%, 91.3%, 94.2%, 93.6%**. In accordance with the requirements contained in 40 TAC §19.2324(b), current nursing facility licensees or property owners of currently licensed nursing facilities may apply for an additional allocation of Medicaid beds. The allocation of additional Medicaid beds is restricted to nursing facility beds that are currently licensed and may be converted to Medicaid-certified beds. Applicants for additional Medicaid beds must demonstrate a history of quality care as specified in 40 TAC §19.2322(e). Applicants must submit a written reply as described in 40 TAC §19.2324(b)(5) to Joe D. Armstrong, Department of Aging and Disability Services, Licensing and Credentialing Section, Regulatory Services, Mail Code E-342, P. O. Box 149030, Austin, Texas 78714-9030. The written reply must be received by DADS before the close of business December 5, 2005, the published ending date of the open solicitation period. If one or more applicants are eligible for additional Medicaid beds, DADS will allocate Medicaid beds in accordance with 40 TAC §19.2324(b)(6) and (7). If the number of beds allocated under the primary selection process does not reduce the occupancy rate below 90%, DADS will place another public notice in the *Texas Register* in accordance with secondary selection process requirements.

TRD-200504835

Phoebe Knauer

General Counsel

Department of Aging and Disability Services

Filed: October 26, 2005



## Texas Department of Agriculture

### Notice of Request for Applications: Texas Yes! Rural Beautification Program

The Rural Economic Development Division (REDD) of the Texas Department of Agriculture (TDA) hereby requests applications from communities for the Texas Yes! Rural Beautification Program for the period of November 7, 2005, through February 15, 2006. For program information, guidelines and applications, contact Robert Wood, Assistant Commissioner for Rural Economic Development. Mr. Wood may be contacted by telephone in Austin at (512) 936-0273 or toll free at (877) 428-7848, by fax at (888) 888-216-9867, or by e-mail at [finance@agr.state.tx.us](mailto:finance@agr.state.tx.us). Information may also be accessed by visiting the Small Town Revitalization web page at [http://www.agr.state.tx.us/eco/rural\\_eco\\_devo/economic\\_development/fin\\_smalltown.htm](http://www.agr.state.tx.us/eco/rural_eco_devo/economic_development/fin_smalltown.htm).

The "Texas Yes! Rural Beautification Program" is a one-time matching funds program developed to assist a rural community in funding a downtown beautification. Beautification projects must be designed to enhance the appearance of the downtown area through the use of (1) planters, (2) benches, (3) decorative light poles, (4) decorative flags, and/or (5) decorative community welcome sign(s). TDA expects that successful applicants will leverage TDA funding by utilizing community resources, such as volunteers from local civic groups, businesses, youth groups, organizations, etc., in a broader downtown beautification effort.

**Eligibility.** To be eligible for participation in the Texas Yes! Rural Beautification Program, the Applicant must be a city government that is a Texas Yes! member and be in good standing with TDA. The Applicant will be the sole contact for the application and reimbursement and the sole contact between the Participating Communities and TDA. The Applicant will be responsible for providing the required application information and for the accuracy of the reimbursement requests.

**Proposal Requirements.** To apply for the Texas Yes! Rural Beautification Program, the Applicant must (i) submit a fully completed and signed Texas Yes! Rural Beautification application; (ii) provide a signed copy of the Texas Yes! License Agreement; (iii) complete the Rural Beautification score sheet; (iv) submit a proposed budget; (v) provide support letters from each participating community organization; (vi) submit a signed Acknowledgement of Reading and Understanding Program Guidelines; and (vii) submit a signed original Resolution from the Community. The Applicant will notify the TDA of any change in the status of the project. A maximum amount awarded per application is \$5,000. The minimum amount awarded is \$1,000. Each award requires a 1:1 match. Up to \$2,500 of the total match amount can be in the form of in-kind support, which includes volunteer labor, landscaping materials, paint, cleaning supplies, etc. Total funds available for all awards are \$100,000. The deadline for submission of applications is February 15, 2006, or until funds are depleted, whichever comes first. To be eligible, an Applicant must score no less than 45 points. Applications will be reviewed in the order received. In the event of a tie score, the tying applications will be ranked from lowest to highest based on the most recently available average county poverty rate. Preference will be given to the application with the higher average poverty rate.

All approved projects must not begin until the contract is signed and must be completed within 6 months from the date the contract is signed. All approved projects will be subject to audit and periodic reporting requirements. To receive reimbursements timely, all reimbursement requests must be received as described in the Texas Yes! Rural Beautification Program guidelines. Only applications that further or enhance a community's rural downtown beautification project and are submitted by Applicants physically located in rural Texas will be considered. TDA reserves the right to terminate any award if it determines, in its sole discretion, that a project does not further or enhance the goals of the Rural Beautification Program and Texas Yes!.

**Proposal should be submitted to** Robert Wood, Assistant Commissioner for Rural Economic Development, Texas Department of Agriculture, 1700 North Congress Avenue, 11th Floor, Austin, Texas 78701.

TRD-200504836  
Dolores Alvarado Hibbs  
Deputy General Counsel  
Texas Department of Agriculture  
Filed: October 26, 2005

◆ ◆ ◆  
**Office of the Attorney General**

**Notice of Settlement of a Public Drinking Water and Wastewater Enforcement Action**

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water and Health and Safety Codes. Before the State may settle a judicial enforcement action, pursuant to the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Acts.

Case Title and Court: ***Settlement Agreement in State of Texas v. Keith L. Peterson, et al., Cause No. 99-01824, in the 200th Judicial District Court of Travis County, Texas.***

Background: The State, on behalf of the Texas Commission on Environmental Quality (TCEQ or Commission), brought this suit to enforce against violations of the Water Code and Health and Safety Code at a public drinking water system and wastewater system in Dallas County, Texas. The violations arise from the defendants' failure to comply with TCEQ rules regarding public drinking water and wastewater systems at the D Bar B mobile home park in Dallas County.

Nature of Settlement: The proposed settlement with the defendants requires them to sell the mobile home park and the water and wastewater systems to a water supply corporation directed by residents of the mobile home park and requires them to pay \$20,000.00 in civil penalties and \$20,000.00 in attorney's fees.

For a complete description of the proposed settlement, the Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Mary Smith, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

*For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at 512-463-2096.*

TRD-200504824  
Stacey Schiff  
Deputy Attorney General  
Office of the Attorney General  
Filed: October 25, 2005

◆ ◆ ◆  
**Notice of Settlement of CERCLA Natural Resource Damages Claim**

Notice is hereby given by the State of Texas of the following proposed resolution of a claim for natural resource damages under the Comprehensive Environmental Response, Compensation, and Liability Act and applicable state law. The State of Texas, on behalf of Texas Commission on Environmental Quality ("TCEQ"), the Texas General

Land Office ("GLO"), and the Texas Parks and Wildlife Department ("TPWD") (collectively, the "State Trustees") has reached an agreement with BP Amoco Chemical Company, Lyondell Chemical Company, Allied Waste Industries, Inc., ChevronTexaco Corporation, The Dow Chemical Co., Fina Oil and Chemical Company, Inc., G.E. Petrochemicals, Inc., HNH Holdings, Huntsman Corporation, Pharmacia Corporation, Rohm & Hass, and Union Carbide Corporation (the "Settling Defendants") to resolve the Settling Defendants' liability for natural resource at the Brio Refining Inc. Superfund Site and the Dixie Oil Processors Superfund Site (collectively, the "Site"). The Attorney General will consider any written comments received on the settlement within 30 days of the date of publication of this notice.

Case Title and Court: ***United States and State of Texas v. BP Amoco Chemical Company, et al., in the United States District Court for the Southern District of Texas, Houston Division, Civil Action No. 4:05-CV-03547.***

Background: Brio Refining and Dixie Oil Processors reclaimed (or recycled) petrochemicals from tank bottoms, residues, and tars to produce toluene, ethylbenzene, aromatic solvents, naphthalene, diesel fuel, and kerosene from 1957-1978. The Brio Site was also used as a crude oil topping unit for jet fuel production from 1978-1982. The Dixie Site housed a copper recovery and hydrocarbon "washing" operation from 1969-1978. From 1978-1986, the Dixie Site operated industrial activities that included used oil recovery. The Settling Defendants sent waste generated at their facilities to the Brio and Dixie Sites for processing and disposal. During the course of processing the waste, hazardous substances leaked or spilled and entered the environment.

The Defendants have previously negotiated a Consent Decree and Administrative Order with the Justice Department and EPA to resolve their CERCLA §107 disposal liability at the Brio-Dixie Site. This case resolves the natural resource damage component of the previous settlements. In the Complaint, the United States and the State of Texas seek (1) Natural Resource Damages for the injury, loss or destruction of natural resources, including the interim loss of the services or use of such resources, resulting from the release of hazardous substances and/or oil at the Site, (2) past costs incurred by the Trustees in assessing these Natural Resource Damages, and (3) future costs to be incurred by the Trustees in overseeing and monitoring the Restoration Projects to be undertaken by Settling Defendants.

Nature of the Settlement: In the Consent Decree, the Settling Defendants agree to purchase a 144-acre tract adjacent to and in the floodplain of Clear Creek in Harris County. The Settling Defendants have agreed to place a Conservation Easement on the tract (to be known as the "Clear Creek Preserve") to preserve the acreage in its natural state in perpetuity. In addition, the Settling Defendants will make specified improvements to the Preserve, including construction of six acres of wetland habitat and preservation of 100 acres of bottomland hardwood habitat with a 19-acre pasture buffer zone.

Proposed Settlement: The proposed settlement will resolve the Settling Defendants' liability to the State for Natural Resource Damages at the Site. In addition, the Settling Defendants' will reimburse the State Trustees for the cost of assessing the damage to the State's natural resources.

Public Comment: The Office of the Attorney General will receive comments relating to the proposed Agreed Final Judgment for 30 days following publication of this Notice. Comments should be addressed to Albert M. Bronson, Assistant Attorney General, Natural Resources Division, P.O. Box 12548, Austin, TX 78711-2548 and should refer to ***United States and State of Texas v. BP Amoco Chemical Company, et al.*** The proposed Agreed Final Judgment may be examined at the Of-

fice of the Attorney General, 300 West 15th Street, 10th Floor, Austin, Texas by appointment. A copy of the proposed Agreed Final Judgment may be obtained by mail from the Office of the Attorney General for the cost of reproduction at 25 cents per page and administrative costs. The settlement documents in this case are lengthy. Please contact the Office of the Attorney General to determine copy costs before requesting documents.

*For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at 512-463-2096.*

TRD-200504825

Stacey Schiff

Deputy Attorney General

Office of the Attorney General

Filed: October 25, 2005



## Texas Building and Procurement Commission

### Request for Proposals

The Texas Building and Procurement Commission (TBPC), on behalf of the Texas Department of Family and Protective Services (DFPS) and the Texas Department of Assistive and Rehabilitative Services (DARS), announces the issuance of Request for Proposal (RFP) #303-6-10285. TBPC seeks a five (5) year or ten (10) year lease of approximately 34,604 square feet of office space in the city of Amarillo, Potter and Randall Counties, Texas.

The deadline for questions is November 9, 2005 and the deadline for proposals is November 16, 2005 at 3:00 P.M. The award date is November 30, 2005.

TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Kenneth Ming at (512) 463-2743. A copy of the revised RFP may be downloaded from the *Electronic State Business Daily* at [http://esbd.tbpc.state.tx.us/1380/bid\\_show.cfm?bidid=61652](http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=61652).

TRD-200504685

Ingrid K. Hansen

General Counsel

Texas Building and Procurement Commission

Filed: October 19, 2005



### Request for Proposals

The Texas Building and Procurement Commission (TBPC), on behalf of the Texas Animal Health Commission (TAHC), announces the issuance of Request for Proposals (RFP) #303-6-10465. TBPC seeks a 5-year lease of approximately 1,636 square feet of office space in the Beeville area, Bee County, Texas.

The deadline for questions is November 22, 2005; and the deadline for proposals is November 30, 2005 at 3:00 P.M. The award date is January 1, 2006. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Kenneth Ming at (512) 463-2743. A copy of the RFP may be downloaded from the *Electronic State Business Daily* at [http://esbd.tbpc.state.tx.us/1380/bid\\_show.cfm?bidid=61679](http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=61679).

TRD-200504750

Ingrid K. Hansen

General Counsel

Texas Building and Procurement Commission

Filed: October 21, 2005



### Request for Proposals

The Texas Building and Procurement Commission (TBPC), on behalf of the Texas Department of Criminal Justice, announces the issuance of Request for Proposals (RFP) #303-6-10463. TBPC seeks a 10 year lease of approximately 1,572 square feet of office space in the Del Rio area, Val Verde County, Texas.

The deadline for questions is November 21, 2005, and the deadline for proposals is November 29, 2005 at 3:00 P.M. The award date is February 1, 2006. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Kenneth Ming at (512) 463-2743. A copy of the RFP may be downloaded from the *Electronic State Business Daily* at [http://esbd.tbpc.state.tx.us/1380/bid\\_show.cfm?bidid=61659](http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=61659).

TRD-200504751

Ingrid K. Hansen

General Counsel

Texas Building and Procurement Commission

Filed: October 21, 2005



## Coastal Coordination Council

### Notice of Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of October 14, 2005, through October 20, 2005. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on October 26, 2005. The public comment period for these projects will close at 5:00 p.m. on November 28, 2005.

#### FEDERAL AGENCY ACTIONS:

**Applicant: Texas Department of Transportation;** Location: The project is located in the San Jacinto River, at its intersection with Interstate 10 (I-10), in Channelview, Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Highlands,

Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 300777; Northing: 3297373. Project Description: The applicant proposes to install four 35-foot-diameter dolphins to aid navigation under the I-10 Bridge. The dolphins will be constructed out of steel sheet piles and bridge timbers. The dolphins will be back-filled with clear sand impacting 0.10 acre of open water. CCC Project No.: 06-0010-F1; Type of Application: U.S.A.C.E. permit application #23911 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

**Applicant: St. Mary's Land and Exploration;** Location: The project is located in State Tract 130A, approximately 6.7 miles northeast of Galveston, about 3,125 feet from the centerline of the Houston Ship Channel, in Galveston Bay, in Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Bolivar, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 325533; Northing: 3251266. Project Description: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling and production activities associated with the Channel Prospect. Such activities include installation of a typical marine barge, a 0.51-acre pad constructed from the placement of 4,548 cubic yards of clean shell, and production structures with attendant facilities. CCC Project No.: 06-0019-F1; Type of Application: U.S.A.C.E. permit application #23758 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

**Applicant: Village of Surfside Beach;** Location: In and adjacent to the Freeport Ship Channel, east of Thunder Road, at Surfside Beach Jetty Park, Brazoria County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Freeport, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 275691; Northing: 3203416. Project Description: The applicant proposes to construct an access channel with 1,025 linear feet of associated bulkhead, a three-lane boat ramp, temporary boat docking facilities, boat slip, and attendant parking and restroom area. Construction of the channel, boat ramp and short term use facility will require the mechanical excavation of approximately 0.168 acre of existing wetlands and 350 cubic yards of material from an area between the High Tide Line (HTL) and the existing bottom water elevation of -4.6 feet. The remainder of the excavation (10,650 cubic yards) will occur in upland areas. Approximately 0.104 acre of existing wetlands would be filled during project construction. To compensate for 0.272 acre of wetland impacts resulting from this project, the applicant proposes to construct 0.272 acre of wetlands onsite using the same vegetation species found in the onsite wetlands being impacted. CCC Project No.: 06-0020-F1; Type of Application: U.S.A.C.E. permit application #23586(01) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

**Applicant: Vintage Petroleum ;** Location: The project is located in San Antonio Bay in State Tracts (ST's) 116 and 117, Calhoun County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Panther Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 723060; Northing: 3124844. Project Description: The applicant proposes to replace an existing 3.0-inch outer diameter pipeline that runs from existing ST 116 Well No. 1 to existing Well No. 3, ST 117, for an approximate 5,203 feet in length. The pipeline would be jetted or plowed a minimum distance of 3 feet below the bay bottom. Approximately 1,156 cubic yards of sand, silt, and clay would be displaced during the pipeline installation. No wetlands, seagrass or oysters would be impacted. A temporary trench (approximately 2 feet wide by 5,203 feet long by 3 feet deep) approxi-

mately 10,406 square feet in size would be constructed. Up to 5 feet of bottom (52,030 square feet) either side of the trench would be temporarily affected. CCC Project No.: 06-0025-F1; Type of Application: U.S.A.C.E. permit application #19768(01) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P. O. Box 12873, Austin, Texas 78711-2873, or [tammy.brooks@glo.state.tx.us](mailto:tammy.brooks@glo.state.tx.us). Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200504808

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: October 25, 2005

## ◆ ◆ ◆ Comptroller of Public Accounts

### Notice of Request for Proposals

Pursuant to Chapter 2254, Subchapter A, and Sections 403.011, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of a Request for Proposals (RFP #175b) from qualified, independent professionals with demonstrated qualifications, competence, and expertise in the field of indirect cost recovery and cost allocation planning for governmental units, to submit proposals to prepare Comptroller's data processing Statewide Cost Allocation Plan (SWCAP) and update. Respondents must be prepared to develop, update, and negotiate the SWCAP with the federal government pursuant to OMB Circular A-87, for the data processing services for Comptroller for the state fiscal year-ending August 31, 2007, based on the expenditures during the fiscal year-ending August 31, 2005. The SWCAP must enable the state to recover the maximum indirect costs possible from federal programs. Comptroller reserves the right, in its sole discretion, to award one or more contracts for the services requested by this RFP. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about January 2, 2006, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78774, telephone number: (512) 305-8673, no later than 2 p.m., Central Zone Time (CZT), November 18, 2005. This notice is the RFP, which the Comptroller also made available electronically on the Texas Marketplace at: <http://esbd.tbpc.state.tx.us> after 10 a.m. (CZT) on Friday, November 4, 2005.

Non-Mandatory Letters of Intent and Questions: All Non-Mandatory Letters of Intent and questions regarding the RFP must be sent via facsimile to Mr. Harris at: (512) 475-0973, no later than 2:00 p.m. (CZT), on Friday, November 18, 2005. Official responses to questions received by the foregoing deadline will be posted electronically on the Texas Marketplace no later than November 22, 2005, or as soon there-

after as practical. Respondents shall be solely responsible for confirming the timely receipt of Non-Mandatory Letters of Intent and Questions submitted in response to this RFP.

**Closing Date:** Proposals must be received in Assistant General Counsel's Office at the address specified above (ROOM G-24) no later than 2 p.m. (CZT), Friday, December 2, 2005. Proposals received after this time and date will not be considered. Respondents must submit one (1) signed original and five (5) copies of each proposal submitted. Respondents shall be solely responsible for confirming the timely receipt of proposals submitted in response to this RFP.

**Evaluation and Award Procedure:** All proposals will be subject to evaluation by a committee based on proposal content, demonstrated experience, competence, knowledge, and qualifications. Comptroller will make the final decision regarding the award of a contract or contracts. Comptroller reserves the right to award one or more contracts under this RFP. Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal or other obligation to execute any contracts on the basis of this RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this RFP.

The anticipated schedule of events is as follows: Publication of RFP - November 4, 2005; All Non-Mandatory Letters of Intent and Questions Due - November 18, 2005, 2 p.m. CZT; Official Responses to Questions Posted - November 22, 2005, or as soon thereafter as practical; Proposals Due - December 2, 2005, 2 p.m. CZT; Contract Execution - January 2, 2006, or as soon thereafter as practical; Commencement of Project Activities - January 2, 2006.

TRD-200504838

Pamela Smith

Deputy General Counsel for Contracts

Comptroller of Public Accounts

Filed: October 26, 2005

## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/31/05 - 11/06/05 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit thru \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/31/05 - 11/06/05 is 18% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment, or other similar purpose.

TRD-200504807

Leslie L. Pettjohn

Commissioner

Office of Consumer Credit Commissioner

Filed: October 25, 2005

## Court Reporters Certification Board

### Certification of Court Reporters

Following the examination of applicants on September 16, 2005, the Texas Court Reporters Certification Board certified to the Supreme Court of Texas the following individuals who are qualified in the

method indicated to practice shorthand reporting pursuant to Chapter 52 of the Texas Government Code, V.T.C.A.:

**MACHINE SHORTHAND:** CARL BROWNING - HOUSTON, TX; ROXANNE DAVENPORT - ROUND ROCK, TX; CHERYL PEMBERTON - VICKSBURG, MS; RAMONA REINHARDT - OAKLAND, CA; ANGELIA SINGLETON - HOUSTON, TX; LINDA VERA - IRVING, TX; VICKI SMITH - LEWISVILLE, TX; CHRISSA MANSFIELD - ALLEN, TX; LEAH PRIDGEN - ALLEN, TX; STACI MORAN - MCKINNEY, TX; RUTH MCCLINTICK - PLANO, TX; JOY QUIROZ HERNANDEZ - AUSTIN, TX; KAILEE WYATT - LEWISVILLE, TX; and RACHEL RIDDLE - LEWISVILLE, TX;

Following the examination of applicants on September 16, 2005, the Texas Court Reporters Certification Board certified to the Supreme Court of Texas the following individuals who are qualified in the method indicated to practice shorthand reporting pursuant to Chapter 52 of the Texas Government Code, V.T.C.A.:

**ORAL STENOGRAPHY:** KIMBERLY HENDERSON - LOS FRESNOS, TX; MARK SANCHEZ - POST FALLS, ID; SANDRA ROSALES - CEDAR HILL, TX; CAITLIN TADE - KELLER, TX; and DINA WILLIAMS - FT. WORTH, TX.

TRD-200504805

Sheryl Jones

Administrator of Licensing

Court Reporters Certification Board

Filed: October 24, 2005

## Texas Commission on Environmental Quality

### Enforcement Orders

An order was entered regarding Gary Lynn Wallace dba Wallace Hog Farm, Docket No. 2002-0234-AIR-E on October 21, 2005 assessing \$3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, Staff Attorney at (512) 239-5111, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Jose Garza, Sr. dba Rancho Potrero Used Auto Parts, Docket No. 2003-1269-WQ-E on October 17, 2005 assessing \$11,550 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sarah Utley, Staff Attorney at (512) 239-0575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Municipal Power Agency, Docket No. 2003-1098-IWD-E on October 17, 2005 assessing \$8,400 in administrative penalties with \$1,680 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kingsville Material Corporation, Docket No. 2004-0021-AIR-E on October 17, 2005 assessing \$10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at (512) 239-5717,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Newark, Docket No. 2003-0014-MWD-E on October 17, 2005 assessing \$15,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alfred Okpohworho, Staff Attorney at (713) 422-8918, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Austin, Docket No. 2003-0025-EAQ-E on October 17, 2005 assessing \$2,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lawrence King, Enforcement Coordinator at (512) 239-7037, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EMAG Solutions, LLC, Docket No. 2003-0723-MLM-E on October 17, 2005 assessing \$22,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Edward Moderow, Enforcement Coordinator at (512) 239-2680, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Camp Wood, Docket No. 2002-0827-PWS-E on October 17, 2005 assessing \$893 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harris Methodist Hospital, Docket No. 2003-1536-PST-E on October 17, 2005 assessing \$1,125 in administrative penalties with \$225 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wiltshire Brothers, Inc. dba Perfect Lawns of Austin, Docket No. 2003-1538-IRR-E on October 17, 2005 assessing \$263 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Merkel, Docket No. 2004-0238-MWD-E on October 17, 2005 assessing \$21,000 in administrative penalties with \$4,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at (361) 825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NSA Investments Inc., Docket No. 2004-0297-PST-E on October 17, 2005 assessing \$18,180 in administrative penalties with \$3,636 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Limos, Enforcement Coordinator at (512)

239-5839, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Pleasure Point Water Supply Corporation, Docket No. 2004-0606-PWS-E on October 17, 2005 assessing \$1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bettye Singletary dba Longhorn Ranch Motel, Docket No. 2004-0741-PWS-E on October 17, 2005 assessing \$1,418 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, Staff Attorney at (512) 239-5111, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Woodward Trading, Inc., Docket No. 2004-0903-AGR-E on October 17, 2005 assessing \$10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, Staff Attorney at (512) 239-5111, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Eagle Lake, Docket No. 2004-0939-MWD-E on October 17, 2005 assessing \$15,480 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ricardo Guerra aka Richard Guerra dba AC Drive In, Docket No. 2004-1119-PST-E on October 17, 2005 assessing \$2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Courtney St. Julian, Staff Attorney at (512) 239-0617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BP Pipelines (North America) Inc., Docket No. 2004-1143-AIR-E on October 17, 2005 assessing \$2,500 in administrative penalties with \$500 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hang Thi Nguyen dba Richmond Food Mart, Docket No. 2004-1167-PST-E on October 17, 2005 assessing \$2,850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Justin Lannen, Staff Attorney at (817) 588-5927, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dung Huynh dba Quik Food Store 20, Docket No. 2004-1210-PST-E on October 17, 2005 assessing \$2,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Melissa Keller, Enforcement Coordinator at (512)



239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Mohammed Hossain dba Food Plus 2, Docket No. 2004-1261-PST-E on October 21, 2005 assessing \$25,380 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Justin Lannen, Staff Attorney at (817) 588-5927, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Degar Fuels Systems, Inc., Docket No. 2004-1264-PST-E on October 17, 2005 assessing \$1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amie Richardson, Staff Attorney at (512) 239-2999, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Karim Sunesara dba Jacks Grocery 4, Docket No. 2004-1276-PST-E on October 17, 2005 assessing \$2520 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mike Campo, Docket No. 2004-1332-MLM-E on October 17, 2005 assessing \$1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Becky Combs, Staff Attorney at (512) 239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jivanji Burhani dba Quick & Easy 10, Docket No. 2004-1338-PST-E on October 17, 2005 assessing \$820 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Dana Shuler, Enforcement Coordinator at (512) 239-2505, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sam Rayburn Water, Inc. dba Lakewood Water System, Docket No. 2004-1508-PWS-E on October 17, 2005 assessing \$345 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Joseph Daley, Enforcement Coordinator at (512) 239-3308, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Somoye Inc. dba Metro Stop, Docket No. 2004-1517-PST-E on October 17, 2005 assessing \$2,140 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ruben Soto, Enforcement Coordinator at (512) 239-4571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mohammad Jamshidi dba Super Stop, Docket No. 2004-1531-PST-E on October 17, 2005 assessing \$3,150 in administrative penalties with \$630 deferred.

Information concerning any aspect of this order may be obtained by contacting Ruben Soto, Enforcement Coordinator at (512) 239-4571,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Via Bayou Inc. dba Via Bayou RV Resort, Docket No. 2004-1544-MWD-E on October 17, 2005 assessing \$5,400 in administrative penalties with \$1,080 deferred.

Information concerning any aspect of this order may be obtained by contacting Pam Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Terry L. Leatherwood dba T Woods Grocery & Gas, Docket No. 2004-1587-PST-E on October 17, 2005 assessing \$3,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Limos, Enforcement Coordinator at (512) 239-5839, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Brownfield, Docket No. 2004-1636-PST-E on October 17, 2005 assessing \$3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lawrence King, Enforcement Coordinator at (512) 239-7037, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MFP Gas Service Company, L.C. dba Highway Oil, Docket No. 2004-1700-PST-E on October 17, 2005 assessing \$10,000 in administrative penalties with \$2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bar-G-Store, Inc., Docket No. 2004-1756-PST-E on October 17, 2005 assessing \$2,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Courtney St. Julian, Staff Attorney at (512) 239-0617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Randall's Food & Drugs LP dba Tom Thumb 3560, Docket No. 2004-1769-PST-E on October 17, 2005 assessing \$525 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Deana Holland, Enforcement Coordinator at (512) 239-2504, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sabine Valley Center dba Oak Haven Recovery Center, Docket No. 2004-1860-MWD-E on October 17, 2005 assessing \$2,100 in administrative penalties with \$420 deferred.

Information concerning any aspect of this order may be obtained by contacting Ruben Soto, Enforcement Coordinator at (512) 239-4571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Josefina Estrella dba La Bodega Quick Stop 2, Docket No. 2004-2019-PST-E on October 17, 2005 assessing \$3,880 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill McNew, Enforcement Coordinator at (512) 239-0560, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ray C. Luna dba Ray's Plumbing & Pump, Docket No. 2004-2044-MLM-E on October 17, 2005 assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Maxwell Lumber Company, Docket No. 2004-2062-AIR-E on October 17, 2005 assessing \$2,040 in administrative penalties with \$408 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Wills Point, Docket No. 2004-2117-MWD-E on October 17, 2005 assessing \$6,400 in administrative penalties with \$1,280 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Palai, LLC dba Lone Star Foods, Docket No. 2005-0028-PST-E on October 17, 2005 assessing \$6,240 in administrative penalties with \$1,248 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Johnson Roofing, Inc., Docket No. 2005-0029-PST-E on October 17, 2005 assessing \$5,600 in administrative penalties with \$1,120 deferred.

Information concerning any aspect of this order may be obtained by contacting Sunday Udoetok, Enforcement Coordinator at (512) 239-0739, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Millennium Petrochemicals, Inc., Docket No. 2005-0053-AIR-E on October 17, 2005 assessing \$10,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Joseph Daley, Enforcement Coordinator at (512) 239-3308, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Saint-Gobain Ceramics & Plastics, Inc., Docket No. 2005-0095-AIR-E on October 17, 2005 assessing \$2,600 in administrative penalties with \$520 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Layne Bales, Docket No. 2005-0098-LII-E on October 17, 2005 assessing \$1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Goodyear Tire & Rubber Company, Docket No. 2005-0124-AIR-E on October 17, 2005 assessing \$3,725 in administrative penalties with \$745 deferred.

Information concerning any aspect of this order may be obtained by contacting Sandy Van Cleave, Enforcement Coordinator at (512) 239-0667, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Miguel Hernandez, Sr., Docket No. 2005-0137-IRR-E on October 17, 2005 assessing \$2,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Adams Resources & Energy, Inc., Docket No. 2005-0144-PST-E on October 17, 2005 assessing \$1,000 in administrative penalties with \$200 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator at (512) 239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brandon-Irene Water Supply Corporation, Docket No. 2005-415-PWS-E on October 17, 2005 assessing \$84 in administrative penalties with \$17 deferred.

Information concerning any aspect of this order may be obtained by contacting Kent Heath, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Al Sadaka, Inc. dba Hopper Food Mart, Docket No. 2005-0183-PST-E on October 17, 2005 assessing \$2,740 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713) 422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sonoco, Inc. (R&M), Docket No. 2005-0188-AIR-E on October 17, 2005 assessing \$3,625 in administrative penalties with \$725 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding StanTrans, Inc., Docket No. 2005-0193-AIR-E on October 17, 2005 assessing \$2,912 in administrative penalties with \$582 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Vilas Kumar dba New Road Texaco, Docket No. 2005-0202-PST-E on October 17, 2005 assessing \$11,000 in administrative penalties with \$2,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Ruben Soto, Enforcement Coordinator at (512) 239-4571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mohammad Iftikhar Ashraf dba Super Food Mart 28, Docket No. 2005-0231-PST-E on October 17, 2005 assessing \$4,200 in administrative penalties with \$840 deferred.

Information concerning any aspect of this order may be obtained by contacting Dana Shuler, Enforcement Coordinator at (512) 239-2505, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lee County Petroleum, Inc., Docket No. 2005-0248-PST-E on October 17, 2005 assessing \$4,000 in administrative penalties with \$800 deferred.

Information concerning any aspect of this order may be obtained by contacting Dana Shuler, Enforcement Coordinator at (512) 239-2505, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding P.M. Fuel Service, Incorporated, Docket No. 2005-0281-PST-E on October 17, 2005 assessing \$4,200 in administrative penalties with \$840 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill McNew, Enforcement Coordinator at (512) 239-0560, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aegon Direct Marketing Services, Inc., Docket No. 2005-0296-PST-E on October 17, 2005 assessing \$1,050 in administrative penalties with \$210 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill McNew, Enforcement Coordinator at (512) 239-0560, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding James M Boswell dba Texas Water Supply, Docket No. 2005-0311-PWS-E on October 17, 2005 assessing \$714 in administrative penalties with \$143 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wood County Airport Board, Docket No. 2005-0324-PST-E on October 17, 2005 assessing \$3,150 in administrative penalties with \$630 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wilsonart International, Inc., Docket No. 2005-0325-AIR-E on October 17, 2005 assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Groendyke Transport, Inc., Docket No. 2005-0327-PST-E on October 17, 2005 assessing \$2,400 in administrative penalties with \$480 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding La Gloria Oil and Gas Company, Docket No. 2005-0342-AIR-E on October 17, 2005 assessing \$10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City Meat Market, Inc., Docket No. 2005-0352-PST-E on October 17, 2005 assessing \$2,400 in administrative penalties with \$480 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Arkema, Inc., Docket No. 2005-0356-AIR-E on October 17, 2005 assessing \$4,075 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Barry, Enforcement Coordinator at (409) 899-8781, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PNI Transportation, Inc., Docket No. 2005-0357-PST-E on October 17, 2005 assessing \$12,600 in administrative penalties with \$2,520 deferred.

Information concerning any aspect of this order may be obtained by contacting Kent Heath, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Coastal Transport Co., Inc., Docket No. 2005-0380-PST-E on October 17, 2005 assessing \$1,000 in administrative penalties with \$200 deferred.

Information concerning any aspect of this order may be obtained by contacting Howard Willoughby, Enforcement Coordinator at (361) 825-3140, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Garland, Docket No. 2005-0400-MWD-E on October 17, 2005 assessing \$40,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Joseph Daley, Enforcement Coordinator at (512) 239-3308, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lake Livingston Water Supply & Sewer Service Corporation dba Paradise Acres Water System, Docket No. 2005-0402-PWS-E on October 17, 2005 assessing \$350 in administrative penalties with \$70 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enbridge Pipelines (NE Texas) L.P., Docket No. 2005-0438-AIR-E on October 17, 2005 assessing \$85,197 in administrative penalties with \$17,039 deferred.

Information concerning any aspect of this order may be obtained by contacting Carolyn Lind, Enforcement Coordinator at (903) 535-5145, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jaime Vasquez, Docket No. 2005-0452-MSW-E on October 17, 2005 assessing \$2,100 in administrative penalties with \$420 deferred.

Information concerning any aspect of this order may be obtained by contacting Brian Lehmkuhle, Enforcement Coordinator at (512) 239-4482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jack Ray & Sons Oil Co., Inc., Docket No. 2005-0458-PST-E on October 17, 2005 assessing \$2,400 in administrative penalties with \$480 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Omar Alzubi dba JR 2 Food Mart and Abdallah R. Alzubi dba JR 2 Food Mart, Docket No. 2005-0476-PST-E on October 17, 2005 assessing \$6,500 in administrative penalties with \$1,300 deferred.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at (512) 239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fresno C-Store, Inc. dba Crossroads Market, Docket No. 2005-0479-PWS-E on October 17, 2005 assessing \$1,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Barton Good Oil Company, Inc., Docket No. 2005-0497-PST-E on October 17, 2005 assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill McNew, Enforcement Coordinator at (512) 239-0560, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Amado Ramirez dba Ramirez Drive Inn, Docket No. 2005-0518-PST-E on October 17, 2005 assessing \$2,500 in administrative penalties with \$500 deferred.

Information concerning any aspect of this order may be obtained by contacting Brian Lehmkuhle, Enforcement Coordinator at (512) 239-4482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Union Water Supply Corporation, Docket No. 2005-0522-MWD-E on October 17, 2005 assessing \$6,800 in administrative penalties with \$1,360 deferred.

Information concerning any aspect of this order may be obtained by contacting Ruben Soto, Enforcement Coordinator at (512) 239-4571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wm. G. Johnson Oil Co. dba Tiger Tote 102, Docket No. 2005-0526-PST-E on October 17, 2005 assessing \$10,000 in administrative penalties with \$2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding C. A. Popp dba C. A. Popp Texaco, Docket No. 2005-0580-PST-E on October 17, 2005 assessing \$950 in administrative penalties with \$190 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pleasant Oil Company, Inc., Docket No. 2005-0582-PST-E on October 17, 2005 assessing \$2,500 in administrative penalties with \$500 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding McCormick Marketing, Inc., Docket No. 2005-0611-PST-E on October 17, 2005 assessing \$1,000 in administrative penalties with \$200 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill McNew, Enforcement Coordinator at (512) 239-0560, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Hawkins, Docket No. 2005-0622-MWD-E on October 17, 2005 assessing \$7,600 in administrative penalties with \$1,520 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of River Oaks, Docket No. 2005-0654-PWS-E on October 17, 2005 assessing \$585 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (713) 767-3500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kirby & Kirby Oil Company, Inc. dba Front Street Shamrock, Docket No. 2005-0663-PST-E on October 17, 2005 assessing \$4,200 in administrative penalties with \$840 deferred.

Information concerning any aspect of this order may be obtained by contacting Colin Barth, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas United Capital, Inc. dba J C Market Deli, Docket No. 2005-0669-PST-E on October 17, 2005 assessing \$6,750 in administrative penalties with \$1,350 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713) 422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KBR Investments, Inc. dba Super Stop 22, Docket No. 2005-0679-PST-E on October 17, 2005 assessing \$1,900 in administrative penalties with \$380 deferred.

Information concerning any aspect of this order may be obtained by contacting Dana Shuler, Enforcement Coordinator at (512) 239-2505, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ron Wood dba South Lakewood Grocery, Docket No. 2005-0681-PST-E on October 17, 2005 assessing \$1,600 in administrative penalties with \$320 deferred.

Information concerning any aspect of this order may be obtained by contacting Howard Willoughby, Enforcement Coordinator at (361) 825-3140, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CHS, Inc., Docket No. 2005-0688-PST-E on October 17, 2005 assessing \$900 in administrative penalties with \$180 deferred.

Information concerning any aspect of this order may be obtained by contacting Melissa Keller, Enforcement Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Barbara Repka dba Repkas Grocery, Docket No. 2005-0703-PWS-E on October 17, 2005 assessing \$150 in administrative penalties with \$30 deferred.

Information concerning any aspect of this order may be obtained by contacting Melissa Keller, Enforcement Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Expert Enterprises, Inc. dba Metro Mart 7, Docket No. 2005-0720-PST-E on October 17, 2005 assessing \$1,600 in administrative penalties with \$320 deferred.

Information concerning any aspect of this order may be obtained by contacting Howard Willoughby, Enforcement Coordinator at (361) 825-3140, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Floyd Overall dba Overall Grocery, Docket No. 2005-0722-PST-E on October 17, 2005 assessing \$1,600 in administrative penalties with \$320 deferred.

Information concerning any aspect of this order may be obtained by contacting Dana Shuler, Enforcement Coordinator at (512) 239-2505, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PNI Transportation, Inc., Docket No. 2005-0723-PST-E on October 17, 2005 assessing \$11,900 in administrative penalties with \$2,380 deferred.

Information concerning any aspect of this order may be obtained by contacting Deana Holland, Enforcement Coordinator at (512) 239-2504, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jimmy Keith Socia, Docket No. 2005-0727-OSI-E on October 17, 2005 assessing \$260 in administrative penalties with \$52 deferred.

Information concerning any aspect of this order may be obtained by contacting Chris Friesenhahn, Enforcement Coordinator at (210) 409-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Circle Bar Truck Corral, Inc., Docket No. 2005-0737-PST-E on October 17, 2005 assessing \$19,500 in administrative penalties with \$3,900 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Santa Anna, Docket No. 2005-0791-PWS-E on October 17, 2005 assessing \$655 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill McNew, Enforcement Coordinator at (512) 239-0560, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding James Hall dba White's Chevron, Docket No. 2005-0808-PST-E on October 17, 2005 assessing \$950 in administrative penalties with \$190 deferred.

Information concerning any aspect of this order may be obtained by contacting Howard Willoughby, Enforcement Coordinator at (361) 825-3140, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bill McCoy dba McCoy's Bargain Barn, Docket No. 2005-0826-PST-E on October 17, 2005 assessing \$7,140 in administrative penalties with \$1,428 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill McNew, Enforcement Coordinator at (512) 239-0560, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding William G. Fittro, Docket No. 2005-0839-LII-E on October 17, 2005 assessing \$625 in administrative penalties with \$125 deferred.

Information concerning any aspect of this order may be obtained by contacting Kent Heath, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mehrin Investments, Inc. dba Shop and Go 3, Docket No. 2005-0894-PST-E on October 17, 2005 assessing \$3,850 in administrative penalties with \$770 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Union Water Supply Corporation, Docket No. 2005-0905-PWS-E on October 17, 2005 assessing \$960 in administrative penalties with \$192 deferred.

Information concerning any aspect of this order may be obtained by contacting Mac Vilas, Enforcement Coordinator at (512) 239-2557, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Stuebner-Airline CVS, L.P., Docket No. 2005-0920-PWS-E on October 17, 2005 assessing \$2,363 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Brownfield, Docket No. 2005-0921-PST-E on October 17, 2005 assessing \$1,800 in administrative penalties with \$360 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator at (512) 239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200504834

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 26, 2005



#### Notice of Availability and Request for Comments on a Draft Natural Resource Damages Restoration Plan

AGENCIES: Texas Commission on Environmental Quality (TCEQ), Texas Parks and Wildlife Department (TPWD), and Texas General Land Office (collectively the Natural Resource Trustees).

ACTION: Notice of Availability of a Draft Assessment Restoration Plan (Draft Plan) for injuries to natural resources from a release of intermediate fuel oil from the Tanker Barge (T/B) Buffalo Marine 286 into the Houston Ship Channel in Upper Galveston Bay and a 30-day period for public comment on this document beginning November 4, 2005.

SUMMARY: Notice is hereby given that a Draft Plan for natural resource damages, resulting from the May 26, 1996, Buffalo Marine 286 intermediate fuel oil spill, is available for public review and comment. This document has been prepared by the Natural Resource Trustees to address injuries or potential injuries to natural resources and the services they provide as a result of a release of crude oil from the Buffalo Marine Services, Inc.'s (Buffalo Marine) Barge Buffalo Marine 286 in the Houston Ship Channel in Upper Galveston Bay. The Draft Plan describes injuries and potential injuries to natural resources related to the spill and identifies a preferred restoration alternative that would replace natural resources and ecological services lost during the incident.

The opportunity for public review and comment on the Draft Plan is required under the Oil Pollution Act of 1990 (OPA).

To receive a copy of the Draft Plan, interested members of the public are invited to contact Charles Brigance of the TCEQ's Remediation Division, MC 225, P. O. Box 13087, Austin, Texas 78711-3087, (512) 239-2238, or by email at [cbriganc@tceq.state.tx.us](mailto:cbriganc@tceq.state.tx.us).

The Draft Plan may also be reviewed on the Texas Commission on Environmental Quality Natural Resource Trustee Program Web site at [www.tceq.state.tx.us/remediation/nrtp/index.html](http://www.tceq.state.tx.us/remediation/nrtp/index.html).

DATES: Comments must be submitted in writing on or before 5:00 p.m. on December 5, 2005, to Charles Brigance at the address listed previously. The Natural Resource Trustees will consider all written comments prior to finalizing the Draft Plan.

SUPPLEMENTARY INFORMATION: At approximately 10:45 P.M. on May 26, 1996, two tanks within the T/B Buffalo Marine 286 ruptured and discharged an estimated 619 barrels of intermediate fuel oil (IFO 380) into the navigable waters of the Houston Ship Channel in Upper Galveston Bay, Harris County, Texas. As a result of the unauthorized discharge of fuel oil, the shoreline of Upper Galveston Bay was impacted, including the shorelines of Atkinson Island, Hogg Island, Morgan's Point, Wilson's Creek, Sylvan Beach, Bay Port Ship Channel, Little Cedar Bayou, and Boggy Bayou. In addition to shoreline/beach impacts there were actual and/or potential impacts to birds, the water column and sediment, estuarine emergent wetlands, and recreational opportunities in the impacted area.

The Natural Resource Trustees assessed and documented natural resource damages resulting from the discharge and associated response actions. Appropriate scientific methodologies were used to determine the nature and extent of the natural resource injuries associated with the incident. This claim was based upon the results of field investigations, the Natural Resource Damage Assessment Model for Coastal and Marine Environments natural resource damage model, a Habitat Equivalency Analysis, TPWD restitution values, and TPWD recreational uses data. The Natural Resource Trustees calculated the claim for damages to be \$15,146.

Following a public notice and comment period, a settlement agreement was entered between the Natural Resource Trustees and Buffalo Marine on October 27, 2000. In this agreement, Buffalo Marine agreed to pay the Natural Resource Trustees a total of \$15,146 to resolve its liability for natural resource damages related to the spill. The damage amount was deposited in the Texas Safekeeping Trust Company where it will draw interest until it is withdrawn for the restoration project recommended by this Draft Plan.

The Draft Plan describes the compensatory restoration project proposed to compensate the public for lost ecological services identified in the damage assessment. Details of the injury assessment and the review of potential restoration options are outlined in the Draft Plan.

In accordance with OPA regulations, the Natural Resource Trustees developed a reasonable range of restoration alternatives to address resource injuries and losses of services. For compensatory restoration planning, the Natural Resource Trustees determined what actions, if any, were appropriate to replace the equivalent of the ecological services lost at these habitats due to exposures to oil as a result of the incident. Some compensatory alternatives considered by the Natural Resource Trustees would provide similar resources and/or services to those injured, while other alternatives would compensate by providing a comparable resource or service.

With the approval of the Natural Resource Trustees, the TCEQ solicited applications on an open basis for the creation of emergent intertidal wetlands in Upper Galveston Bay. The Natural Resource Trustees reviewed the applications and selected the Wildlife Habitat Council's proposed St. Mary's Island Wetland Plant Project between Alexander Island and Scott Bay as the preferred restoration alternative for implementation using the Buffalo Marine settlement funds. The St. Mary's project was chosen as the best fit to OPA's Natural Resource Damage Assessment regulation criteria based on the amount of wetlands proposed for construction with available funding, the expected quality of the emergent intertidal wetlands to be constructed, and the proximity of the project to the area affected by the discharge.

The Draft Plan identifies the methods used to determine and quantify natural resource injuries and ecological services lost as a result of the Buffalo Marine 286 discharge, including the scale of restoration actions required to compensate the public. The Draft Plan also provides a review of the potential restoration options and identifies the preferred restoration action that the Natural Resource Trustees propose to implement that will restore, replace, or acquire resources or services equivalent to those injured by the Buffalo Marine 286 discharge.

TRD-200504811

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 25, 2005



#### Notice of Deletion of Phipps Plating Site from the State Superfund Registry

The executive director (ED) of the Texas Commission on Environmental Quality (TCEQ or commission) is issuing this notice of deletion of the Phipps Plating State Superfund Site (the Site) from its proposed-for-listing status on the list of state Superfund sites (state registry). The state registry lists the contaminated sites which may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment.

The Site was originally proposed for listing on the state registry in the July 22, 1997 issue of the *Texas Register* (22 TexReg 6897). The Site, including all land, structures, appurtenances, and other improvements, is approximately 1/2 acre located at 301-305 Grayson Street, San Antonio, Bexar County, Texas. The Site also included any areas where hazardous substances came to be located as a result of, either directly or indirectly, releases of hazardous substances from the Site.

Phipps Plating started operating an electroplating metal parts and fixtures facility in 1948. The TCEQ's San Antonio regional office inspected the abandoned site in May 1993. The TCEQ conducted an emergency removal of sludge and drummed waste and then secured access to the site by fencing the perimeter and securing all entrances to the building. In November 1994, the TCEQ conducted a preliminary assessment inspection to assess the site for the United States Environmental Protection Agency. Upon determination that the Site did not qualify for the National Priorities List, the Site was proposed to the state Superfund registry. The remedial investigation and removal actions were performed at the Site. Removal actions included the removal of all on-site buildings, structures, and metal-contaminated soils on and off site. The removal actions resulted in off-site soils being restored to residential use, and on-site soils being restored to commercial/industrial use.

The Site is not appropriate for residential use according to the protective concentration levels in the Texas Risk Reduction Program. A deed notice was filed in the real property records of Bexar County stating that no further remediation of the Site is required by the TCEQ as long as the Site is not to be used for residential purposes.

In accordance with 30 TAC §335.344(b), the commission held a public meeting on September 15, 2005, at Pershing Elementary School in San Antonio, to receive comments on the intended deletion of the Site. No comments were received at the public meeting.

The complete public file, including a transcript of the public meeting, may be viewed during regular business hours at the commission's Records Management Center, Records Customer Service, Building E, First Floor, MC 199, 12100 Park 35 Circle, Austin, Texas 78753, (800) 633-9363 or (512) 239-2920. Fees are charged for photocopying file information.

In accordance with 30 TAC §335.344(c), the ED has determined that due to the removal actions that have been performed, the Site no longer presents an imminent and substantial endangerment to public health and safety or the environment.

In accordance with Texas Health and Safety Code, §361.188(d), a notice will be filed in the real property records of Bexar County, Texas, stating that the Site has been deleted from the state registry.

All inquiries regarding the deletion of the Site should be directed to Bruce McAnally, TCEQ Community Relations, (800) 633-9363.

TRD-200504812

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 25, 2005

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**Notice of Request for Public Comment and Public Meeting for a Total Maximum Daily Load and Update to the State Water Quality Management Plan**

The Texas Commission on Environmental Quality (TCEQ or commission) has made available for public comment one draft Total Maximum Daily Load (TMDL) for dissolved oxygen (DO) in Lake O' the Pines (Segment 0403) located in northeast Texas. The TCEQ will conduct a public meeting to receive comments on the draft TMDL. This announcement also constitutes notice that the TMDL will become part of the State Water Quality Management Plan upon approval by the United States Environmental Protection Agency (EPA).

Texas is required to develop TMDLs for impaired water bodies under Federal Clean Water Act, §303(d). A TMDL is a detailed water quality assessment that provides the scientific foundation to allocate pollutant loads in a certain body of water in order to restore and maintain designated uses.

The TCEQ will conduct a public meeting on the draft TMDL for dissolved oxygen at Lake O' the Pines, located in the Cypress Creek Basin in Marion, Morris, and Upshur Counties. The purpose of the public meeting is to provide the public an opportunity to comment on the draft TMDL. The commission requests comments on each of the six major components of the TMDL: problem definition, endpoint identification, source analysis, linkage between sources and receiving waters, margin of safety, and pollutant loading allocation. After the public comment period, TCEQ staff may revise the TMDL, if appropriate. The final TMDL will then be considered by the commission for adoption. Upon adoption of the TMDL by the commission, the final TMDL and a response to all comments will be made available on the TCEQ Web site. The TMDL will then be submitted to EPA Region 6 for approval. Upon approval, the TMDL will be certified as an update to the State of Texas Water Quality Management Plan.

A public meeting will be held on **Thursday, November 17, 2005, at 7:00 p.m., at the Northeast Texas Municipal Water District's Office, 4180 Farm-to-Market 250, Hughes Springs, Texas**. Individuals may present oral comments when called upon in order of registration. There will be no open discussion during the meeting; however, an agency staff member will be available to discuss the matter 30 minutes prior to the meeting and will answer questions before and after the meeting.

Written comments should be submitted to Arthur Talley, TCEQ Water Programs Division, MC 203, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-1414. All comments must be received by 5:00 p.m., December 5, 2005, and should reference, *One Total Maximum Daily Load for Dissolved Oxygen in Lake O' the Pines, For Segment 0403*. For further information regarding the draft TMDL, please contact Mr. Talley, at (512) 239-4546 or [atalley@tceq.state.tx.us](mailto:atalley@tceq.state.tx.us). Copies of the draft TMDL document can be obtained on the commission's Web site at <http://www.tceq.state.tx.us/implementation/water/tmdl/19-lakeopines.html>, or by calling (512) 239-1627.

Persons who have special communication or other accommodation needs who are planning to attend the meeting should contact the commission at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-200504839

Stephanie Bergeron Perdue

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: October 26, 2005

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**Notice of Water Quality Applications**

The following notices were issued during the period of September 29, 2005 through October 20, 2005.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

CITY OF ALAMO has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. 13633-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located approximately 14,000 feet south Tower Road from the intersection of Tower Road and U.S. 83 Business Highway or approximately 17,000 feet south from the intersection of South Tower Road with U.S. 83 Expressway in Hidalgo County, Texas.

AQUA UTILITIES, INC. has applied for a new permit, proposed TPDES Permit No. WQ0014626001, to authorize the discharge of filter backwash water from a water treatment plant at a daily average flow not to exceed 45,000 gallons per day. The facility is located 8.5 miles northwest of the City of Floresville on U.S. Highway 181, and 600 feet east-southeast of the intersection of Windmill Drive and Eagle Creek Ranch Boulevard in Wilson County, Texas.

AUC GROUP, L.P. has applied for a new permit, proposed TPDES Permit No. WQ0014636001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 112,500 gallons per day. The facility will be located approximately one mile southeast of the intersection of Interstate Highway 10 and North Main Street in Harris County, Texas.

BP POLYETHYLENE NORTH AMERICA, which operates the La-Porte Plant, a polyolefin manufacturing facility, has applied for a major amendment to TPDES Permit No. WQ0000544000 to increase the permitted daily average permitted flow at Outfall 001 from 2,000,000 gallons per day to 3,980,000 gallons per day; increase the permitted daily maximum permitted flow at Outfall 001 from 2,500,000 gallons per day to 5,510,000 gallons per day; remove Outfall 003 from the permit and reroute wastewaters previously discharged via Outfall 003 for discharge via Outfall 001; increase effluent limitations for all limited parameters at Outfall 001; and include specific permit provisions to address the regulatory requirements associated with the continuous monitoring of pH at Outfall 004. The current permit authorizes the discharge of treated process wastewater, utility wastewater, domestic wastewater, storm water runoff, and treated Interlox wastewater at a daily average flow not to exceed 2,000,000 gallons per day via Outfall 001; the discharge of utility wastewater and storm water runoff on an intermittent and flow variable basis via Outfall 002; the discharge of treated process wastewater, utility wastewater, domestic wastewater and storm water runoff at a daily average flow not to exceed 1,500,000 gallons per day via Outfall 003; the discharge of utility wastewater and storm water runoff on an intermittent and flow variable basis via Outfall 004, and the discharge of storm water runoff on an intermittent and flow variable basis via Outfall 005. The facility is located at 1230 Battleground Road (State Highway 134), south of Miller Cutoff Road in the City of Deer Park, Harris County, Texas.

CLINT INDEPENDENT SCHOOL DISTRICT has applied for a renewal of Permit No. 13441-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day via subsurface disposal by means of rapid

infiltration/evaporation. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 3.5 miles east-southeast of the intersection of U.S. Highway 62/180 and Farm-to-Market Road 659 (Zaragosa Road) on the campus of Mountain View High School in El Paso County, Texas.

COUNTRY TERRACE WATER COMPANY, INC. has applied for a major amendment to TPDES Permit No. WQ0011955001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 220,000 gallons per day to a daily average flow not to exceed 490,000 gallons per day. This application was submitted to the Texas Commission on Environmental Quality (TCEQ) on January 25, 2005. The facility is located approximately 600 feet south of Highlands Reservoir, approximately 0.75 mile northwest of the intersection of Wallisville and Wade Roads in Harris County, Texas.

CITY OF DALLAS which operates the City of Dallas Municipal Separate Storm Sewer System (MS4), has applied to the TCEQ for a renewal of existing NPDES Permit No. TXS000701. The draft permit would authorize storm water point source discharges to surface water in the state from the City of Dallas Municipal Separate Storm Sewer System. The permit will be renewed as TPDES Permit No. WQ0004396000. The municipal separate storm sewer system (MS4) is located within the corporate boundary of the City of Dallas, in Dallas, Collin, Denton, Rockwall, and Kaufman Counties, Texas.

CITY OF DAYTON has applied for a major amendment to TPDES Permit No. 10564-004 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 2,000,000 gallons per day to an annual average flow not to exceed 4,000,000 gallons per day. The facility is located approximately 0.50 mile southwest of the intersection of State Highway 146 and U. S. Highway 90 in Liberty County, Texas.

THE CITY OF DE KALB has applied for a renewal of TPDES Permit No. 10062-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 350,000 gallons per day. The facility is located south of De Kalb, approximately 1.5 miles due south of the intersection of U.S. Highway 82 and Farm-to-Market Road 992 in Bowie County, Texas.

CITY OF DIMMITT has applied for a renewal of Permit No. 10080-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day via surface irrigation of 477 acres of nonpublic access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately one mile east of U.S. Highway 385 and 0.6 mile north of State Highway 86, northeast of the City of Dimmitt in Castro County, Texas.

CITY OF FORT WORTH, TARRANT REGIONAL WATER DISTRICT, AND TEXAS DEPARTMENT OF TRANSPORTATION which operate the City of Fort Worth Municipal Separate Storm Sewer System (MS4), have applied for a renewal of NPDES Permit No. TXS000901, which authorizes storm water point source discharges to surface water in the state from the City of Fort Worth Municipal Separate Storm Sewer System (MS4). The permit will be renewed as TPDES Permit No. WQ0004350000. The MS4 is located within the corporate boundary of the City of Fort Worth, in Denton, Tarrant, and Wise Counties, Texas.

GRAYSON COUNTY JUNIOR COLLEGE has applied for a renewal of TPDES Permit No. WQ0010689001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 36,000 gallons per day. The facility is located at 6101 Grayson Drive in the City of Denison, approximately 3 miles west of U.S. Highway 75 on the north side of Farm-to-Market Road 691 and approximately 6



miles south of the City of Denison business district in Grayson County, Texas.

HARMONY INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. 13050-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility is located approximately 100 feet north of State Highway 154 on the southwest corner of the Harmony Independent School District campus, 3.9 miles west of the intersection of State Highway 154 and Farm-to-Market Road 1795, and approximately 8 miles west of Gilmer in Upshur County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 1 has applied for a major amendment to TPDES Permit No. 11630-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 950,000 gallons per day to an annual average flow not to exceed 1,500,000 gallons per day. The facility is located on the south side of London Way Drive, approximately 400 feet east of the intersection of London Way Drive and Kuykendahl Road in Harris County, Texas.

CITY OF HEDLEY has applied for a renewal of Permit No. 10709-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day via surface irrigation of 20 acres of non-public access grassland. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located northeast of the City of Hedley, approximately 1.2 miles north and 0.8 mile east of the intersection of U.S. Highway 287 and State Highway 203 in Donley County, Texas.

CITY OF HOUSTON has applied for a renewal of TPDES Permit No. 10495-150, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 700,000 gallons per day. The facility is located approximately 600 feet east of U.S. Highway 59 at Greens Bayou Bridge on the south bank of Greens Bayou in Harris County, Texas.

CITY OF HUMBLE has applied for a major amendment to TPDES Permit No. 10763-002 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 3,300,000 gallons per day to an annual average flow not to exceed 6,500,000 gallons per day. The draft permit does not include the 6,500,000 gallons per day final phase because the applicant did not justify its need for 6,500,000 gallons per day. The permit is drafted for an annual average flow not to exceed 5,530,000 gallons per day in the final phase. The facility is located approximately 3,000 feet south of the intersection of Will Clayton Boulevard and U.S. Highway 59, on the western banks of Garners Bayou and within the City limits of Humble in Harris County, Texas.

CITY OF IOWA PARK has applied for a renewal of TPDES Permit No. 10691-002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,000,000 gallons per day. The facility is located southwest of the City of Iowa Park, approximately 0.25 mile west of Farm-to-Market Road 368 and one mile north of Farm-to-Market Road 367 in Wichita County, Texas.

THE CITY OF LA COSTE has applied for a renewal of TPDES Permit No. 10889-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located at the easterly city limits of the City of La Coste, approximately 0.5 mile east-southeast of the intersection of Farm-to-Market Road 471 and Farm-to-Market Road 2790, 0.30 mile due south of the Southern Pacific Railroad in Medina County, Texas.

LAKE FORK RESORT, LLC has applied for a renewal of TPDES Permit No. 13975-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day.

The facility is located approximately 700 feet east of Farm-to-Market Road 17 and 0.3 mile south of Farm-to-Market Road 515 in Wood County, Texas.

CITY OF LAREDO has applied for a renewal of TPDES Permit No. WQ0010681002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 14,000,000 gallons per day. The applicant has also applied to the TCEQ for approval of a new pretreatment program under the TPDES program. The facility is located on the banks of the Rio Grande, between Marcella Avenue and Springfield Avenue, south of Willow Street in the City of Laredo in Webb County, Texas.

LAZBUDDIE UTILITY WATER SUPPLY CORPORATION has applied for a renewal of Permit No. 13553-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day via non-public access subsurface drainfields with a surface area of 32,000 square feet. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 3,500 feet northwest of the intersection of Farm-to-Market Roads 145 and 1172 in Parmer County, Texas.

CITY OF MANVEL has applied to the TCEQ for a major amendment to TPDES Permit No. 13872-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 100,000 gallons per day to a daily average flow not to exceed 500,000 gallons per day. The facility is located approximately 0.8 mile northwest of the intersection of State Highway 6 and Farm-to-Market Road 1128 in Brazoria County, Texas.

THE CITY OF MAUD has applied for a renewal of TPDES Permit No. 14025-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 192,000 gallons per day. The facility is located approximately 1,500 feet south of U.S. Highway 67 and St. Louis Southwestern Railroad, and approximately 5,000 feet east of the intersection of U.S. Highway 67 and State Highway 8 in Bowie County, Texas.

NORTH TEXAS TOLLWAY AUTHORITY which operates the North Texas Tollway Authority Municipal Separate Storm Sewer System (MS4), has applied to the TCEQ for a major amendment to NPDES Permit Nos. TXS000701 and TXS001801 to authorize storm water point source discharges to surface water in the state from areas of the MS4 located within the corporate boundaries of the Cities of Dallas, Plano, Garland, and Irving. The current permits authorize storm water point source discharges to surface water in the state from the North Texas Tollway Authority MS4 located within the corporate boundaries of the Cities of Dallas and Plano, respectively. This permit will be issued as TPDES Permit No. WQ0004400000. This application was submitted to the TCEQ on November 14, 2001. The MS4 is located in Collin, Dallas, and Denton Counties, Texas.

CITY OF PANHANDLE has applied for a renewal of Permit No. 10359-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 280,000 gallons per day via surface irrigation of 75 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 2,500 feet east of the intersection of U.S. Highway 60 and State Highway 293, east of the City of Panhandle in Carson County, Texas.

PETTUS MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. 10748-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 105,000 gallons per day. The facility is located approximately 1,400 feet west of U.S. Highway 181, and 2,400 feet south of Farm-to-Market Road 623 in Bee County, Texas.

THE CITY OF PINEHURST has applied for a renewal of TPDES Permit No. 10597-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located at 3000 Gull Street in the City of Pinehurst in Orange County, Texas.

CITY OF POTTSBORO has applied for a major amendment to TPDES Permit No. 10591-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 350,000 gallons per day to a daily average flow not to exceed 900,000 gallons per day. The facility is located on County Line Road at Little Mineral Creek, approximately 1.6 miles north of the intersection of Farm-to-Market Road 120 and Farm-to-Market Road 996 in Grayson County, Texas.

THE CITY OF QUEEN CITY has applied for a renewal of TPDES Permit No. 11225-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility is located on the south side of Cypress Creek approximately 1.1 mile east and 0.2 mile north of the intersection of Farm-to-Market Road 96 and U.S. Highway 59 in Cass County, Texas.

RANKIN PARK MAINTENANCE AND UTILITIES CO., INC. has applied for a new permit, proposed TPDES Permit No. WQ0014621001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located 4,500 feet east of the intersection of Interstate Highway 45 and Rankin Road in Harris County, Texas.

CITY OF REDWATER has applied for a renewal of TPDES Permit No. 10926-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 140,000 gallons per day. The facility is located approximately 800 feet east of Farm-to-Market Road 991 from a point located approximately 3,100 feet south of the intersection of Farm-to-Market Road 991 with the St. Louis Southwestern Railway, south of the City of Redwater in Bowie County, Texas.

RIVIERA WATER CONTROL AND IMPROVEMENT DISTRICT has applied for a renewal of TPDES Permit No. 13374-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located at 400 West Live Oak in the southwest corner of the City of Riviera, approximately 0.35 mile west of U.S. Highway 77 and approximately 0.4 mile south of State Highway 285 in Kleberg County, Texas.

CITY OF ROXTON has applied for a renewal of TPDES Permit No. WQ0010204001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located approximately 2,400 feet southeast of the intersection of Farm-to-Market Road 137 and Chaparral Railroad on the north side of Denton Creek and on the south side of the City of Roxton in Lamar County, Texas.

CITY OF SADLER has applied for a renewal of TPDES Permit No. 11037-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 66,000 gallons per day. The facility is located on East Pecan Street, approximately 2,200 to about 2,600 (near side to far side) east southeast from the intersection of Farm-to-Market Road 901 with the Missouri-Kansas-Texas Railroad in Grayson County, Texas.

SMILING MALLARD DEVELOPMENT, LTD. has applied for a new permit, proposed TPDES Permit No. WQ0014617001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The facility will be located 2.56 miles northwest of the intersection of State Highway 6 and State Highway 159 in Brazos County, Texas.

SOUTH CENTRAL WATER COMPANY has applied for a new permit, proposed TPDES Permit No. WQ0014633001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day. The facility will be located 500 feet northeast of the intersection of North Lake Houston Parkway and Greens Bayou in Harris County, Texas.

TARKINGTON INDEPENDENT SCHOOL DISTRICT has applied for a major amendment to TPDES Permit No. 11377-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 30,000 gallons per day to a daily average flow not to exceed 32,000 gallons per day. The facility is located approximately 1.5 miles east of the intersection of Farm-to-Market Road 163 and State Highway 321, and 8 miles southeast of the City of Cleveland in Liberty County, Texas.

TEXAS DEPARTMENT OF TRANSPORTATION has applied for a renewal of TPDES Permit No. WQ0011973001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located within the right-of-way of Interstate Highway 20 at a point approximately 3.4 miles east of Farm-to-Market Road 450 in Harrison County, Texas.

THE TEXAS DEPARTMENT OF TRANSPORTATION has applied for a renewal of TPDES Permit No. 12009-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 7,500 gallons per day. The facility is located within the right-of-way of U.S. Highway 59 approximately six and one half mile northeast of the City of Linden in Cass County, Texas.

TEXAS PARKS AND WILDLIFE DEPARTMENT has applied for a renewal of Permit No. 14247-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 8,200 gallons per day via non-public access subsurface gravity drainfields with a total area of 43,000 square feet. This permit will not authorize a discharge of pollutants into waters in the State. The Amphitheater facility and disposal site is located approximately 1,500 feet east of Goodnight Peak on Park Road 5 (Palo Duro Drive) in Randall County, Texas. The Sagebrush facility and disposal site is located approximately 2,000 feet east of Goodnight Peak on Park Road 5 (Palo Duro Drive) in Randall County, Texas.

TRD-200504833

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 26, 2005



## Notice of Water Rights Application

Notices mailed October 20, 2005 through October 24, 2005.

Application No. 08-2410 G; North Texas Municipal Water District (District or Applicant), P.O. Box 2408, Wylie, Texas 75098, seeks to amend Certificate of Adjudication No. 08-2410, pursuant to §11.122 and §11.042 of the Texas Water Code, and Texas Commission on Environmental Quality (TCEQ) Rules 30 Texas Administrative Code (TAC) §§295.1, et seq. Certificate of Adjudication No. 08-2410 authorizes the District to impound 380,000 acre-feet of water in Lake Lavon in the Trinity River Basin in Collin County (owned by the United States Army Corps of Engineers) and to divert and use from Lake Lavon not to exceed: (1) 100,000 acre-feet of water per year for municipal purposes; (2) 4,000 acre-feet per year for industrial and municipal purposes; (3) 77,300 acre-feet of Trinity River Basin water per year for municipal purposes by over-drafting the firm yield of Lake Lavon when Lake Ray Hubbard is at or above the maximum conser-

vation level (435.5 feet above mean sea level (amsl)) and spilling or whenever additional water up to 77,300 acre-feet per year is supplied from Lake Texoma to Lake Lavon pursuant to Water Use Permit No. 5003; (4) 44,900 acre-feet of Trinity River Basin water per year for municipal purposes by over-drafting in excess of the firm yield of Lake Lavon during times when Lake Ray Hubbard is at or above the maximum conservation level and spilling; (5) 57,214 acre-feet of water per year from Lake Lavon for municipal purposes consisting of a combination of over-drafting a maximum of 44,900 acre-feet of Trinity River Basin water and water supplied from Lake Chapman pursuant to Certificates of Adjudication Nos. 03-4797 and 03-4798; and (6) 71,882 acre-feet of water per year discharged into Lake Lavon from the District's Wilson Creek Wastewater Treatment Plant (WWTP). Certificate of Adjudication No. 08-2410 provides that the total consumptive use of water authorized by Certificates of Adjudication Nos. 08-2410, 03-4797, 03-4798, and Water Use Permit No. 5003 for municipal purposes within the District's service area shall not exceed 234,514 acre-feet of water per year. If water is not transferred from Lake Chapman to Lake Lavon, the total consumptive use of water authorized by Certificate of Adjudication No. 08-2410 shall not exceed 222,200 acre-feet of water per year. The Certificate also authorizes the consumptive use of not to exceed 4,000 acre-feet of water per year for municipal and industrial purposes. Certificate of Adjudication No. 08-2410 contains several priority dates, special conditions and diversion rates. The District has two contracts with the United States Army Corps of Engineers which authorize the District to use 100 percent of the conservation storage in Lake Lavon between elevations 492 feet amsl and 453 feet amsl. Pursuant to revised calculations of the storage capacity and firm yield in Lake Lavon between these elevations, the District seeks to amend Certificate of Adjudication No. 08-2410 to authorize: (1) An increase in the District's storage by 63,800 acre-feet of water, thereby increasing the authorized maximum storage from 380,000 to 443,800 acre-feet of water and to impound the water for subsequent diversion and use; (2) An increase the District's diversion and use authorization by 14,840 acre-feet of firm yield water per year, thereby increasing the maximum authorized diversion and use from 104,000 to 118,840 acre-feet of water per year within its service area in the Trinity River Basin, of which 4,000 acre-feet is for municipal and industrial purposes and the remaining 114,840 acre-feet per year for municipal purposes; (3) The diversion of municipal water from anywhere on the perimeter of Lake Lavon; (4) An increase in the maximum combined diversion rate of municipal water from 1,328 cfs (596,007gpm) to 1,821 cfs (817,265 gpm); and (5) The use of the bed and banks of an unnamed tributary of Hickory Creek, Hickory Creek, Indian Creek and Lake Lavon to convey a maximum of 57,214 acre-feet of water per year at a rate of 340.36 cfs (152,753.57 gpm) from Lake Chapman in the Sulphur River Basin to the District's diversion facilities on Lake Lavon in the Trinity River Basin. The water will be released into an unnamed tributary of Hickory Creek at Latitude 33.222° N and Longitude 96.333° W and conveyed down the bed and banks of the unnamed tributary of Hickory Creek, Hickory Creek, Indian Creek, Lake Lavon, and from Lake Lavon to the District's diversion facilities. Applicant indicates that negligible losses will occur during conveyance of the water. Applicant further indicates that all return flows generated from the municipal use of this water will remain within the Trinity River Basin, and a portion of the return flows not returned to the Wilson Creek WWTP will be used in accordance with the District's concurrent Application No. 08-2410F, if granted. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The amendment application was received on August 5, 2004, and additional information was received October 12, 2004 and January 13, 2005. The application was declared administratively complete and filed with the Office of the Chief Clerk on January 28, 2005. Written public comments and requests for a public meeting

should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. Please specify the Application No. 08-2410G on any comments or requests for a public meeting.

APPLICATION NO. 5874; 2219 Kaufman Partners, L.P., 8181 Douglas Avenue, Suite 310, Dallas, Texas 75225, applicant, seeks a Water Use Permit pursuant to Texas Water Code §11.042 and §11.143 and TCEQ Rules 30 TAC §§295.1, et seq. 2219 Kaufman Partners, L.P., applicant, seeks authorization to modify and maintain an existing, exempt, NRCS-built dam and reservoir (currently impounding 191.18 acre-feet of water) on an unnamed tributary of Buffalo Creek, tributary of the East Fork of the Trinity River, tributary of the Trinity River, Trinity River Basin, for agricultural (irrigation) and in-place recreational purposes. After modifications, the reservoir will impound 190.3 acre-feet of water, and have a surface area of 33 acres. Applicant indicates that the reservoir will impound a combination of State water, groundwater, and purchased water. The dam is located in the John G. Moore Survey, Abstract 309, approximately 4.7 miles in a south-southeast direction from Forney, Texas. The approximate midpoint on the centerline of the dam is located bearing N 27.664° E, 8,768.41 feet from the westerly corner of the Moore Survey, and the principal spillway is located on the upstream slope of the existing dam at Latitude 36.682° N and Longitude 96.444° W. Applicant also seeks authorization to convey a combination of up to 265 acre-feet of groundwater and/or purchased water per year down the bed and banks of an unnamed tributary of Buffalo Creek and a man-made grass swale to the reservoir. The water will be discharged from two points and conveyed to the reservoir for storage and subsequent diversion and use of not to exceed 81 acre-feet of discharged water from the perimeter of the reservoir at a maximum diversion rate of 1.11cfs (500 gpm) for agricultural purposes to irrigate 35 acres out of 246.832 acres of land in the Martha Musick Survey, Abstract No. 312 and the John Moore Survey, Abstract No. 309, in Kaufman County. The proposed groundwater well will be located at Latitude 32.680° N and Longitude 96.442° W. Applicant has provided driller logs of similarly-sized and constructed groundwater wells in the applicant's general vicinity which indicate that these groundwater wells can produce 0.78cfs (351 gpm), or approximately 263 acre-feet every 170 days. The applicant has indicated that the proposed well will not produce at a rate greater than 1.33 cfs (600 gpm). Groundwater will be piped from the well to an unnamed man-made grass swale (ditch) near the northern abutment of the dam, where it will be released and conveyed into the reservoir via gravity flow at a maximum combined discharge rate (in combination with the discharge of purchased water) of 1.33 cfs (600 gpm). Discharge point No. 1 is located at Latitude 32.684° N and Longitude 96.439° W, 10.5 miles northwest of the City of Kaufman and 4.7 miles southeast of the City of Forney. The purchased water will be provided by the North Texas Municipal Water District (NTMWD) as part of the East Fork Reuse Project proposed under a pending amendment to NTMWD's Certificate of Adjudication No. 08-2410. Applicant indicates that if Application No. 08-2410F is not granted by the Commission, then any authorization to discharge or convey this purchased water will become null and void. The purchased water will be released at a maximum combined discharge rate (in combination with the discharge of groundwater) of 1.33 cfs (600 gpm) at discharge point No. 2 located upstream of the reservoir on an unnamed tributary of Buffalo Creek at Latitude 32.700° N and Longitude 96.429° W, 11 miles southeast of the City of Kaufman and 3.75 miles southeast of the City of Forney. Applicant indicates that an average of 4.22 gpm, or 1.1% of the amount released at the discharge points will be lost to evaporation and infiltration losses along the length of the bed and banks. Applicant will maintain an accounting plan, approved by the Executive Director, which will account for all water in storage by sources, including evaporative losses, in order to determine the amount of groundwater and/or purchased water available for di-

version, if any. Ownership of the land inundated by the reservoir and to be irrigated is evidenced by a Special Warranty Deed with Vendors Lien dated January 6, 2003, filed in Volume 2127, Pages 184-196 in the County Clerk's Office of Kaufman County, Texas. The two sponsors of the existing, exempt, NRCS-built reservoir are the Kaufman-Van Zandt Soil and Water Conservation District and the County of Kaufman. The sponsors have given written consent and indicated that they have no objection provided that no permanent structures will be built on the dam or within the emergency spillway, and that no structure or enhancements will be placed near the dam that may be destroyed or damaged by floodwaters. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application and fees were received on December 8, 2004, and additional information on March 28, June 15, and July 13 and 28, 2005. The application was declared to be administratively complete and accepted for filing with the Office of the Chief Clerk on August 18, 2005. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

#### INFORMATION SECTION

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be

affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

TRD-200504832

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 26, 2005

### **Department of State Health Services**

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

#### NEW LICENSES ISSUED

Location	Name	License #	City	Amendment #	Date of Action
Dallas	Joseph A. Meacham MD PA DBA Heart Center of Dallas	L05942	Dallas	00	10/13/05

#### AMENDMENTS TO EXISTING LICENSES ISSUED

Location	Name	License #	City	Amendment #	Date of Action
Abilene	Rentech Boiler Services Inc.	L05624	Abilene	04	09/30/05
Arp	Baker Tank Company	L02599	Arp	22	10/17/05
Austin	Austin Heart PA	L04623	Austin	29	10/05/05
Austin	Austin Heart PA	L05580	Austin	10	10/05/05
Austin	Heart Hospital IV LP	L05215	Austin	17	10/05/05
Austin	St. David's Healthcare Partnership LP DBA North Austin Medical Center	L04910	Austin	53	10/13/05
Austin	St. David's Healthcare Partnership LP DBA North Austin Medical Center	L04910	Austin	54	10/14/05
Bellaire	Imaging Centers of Greater Houston LP DBA Greater Houston Imaging Med Center	L05656	Bellaire	04	10/13/05
Big Spring	Big Spring Hospital Corporation DBA Scenic Mountain Medical Center	L00763	Big Spring	47	10/10/05
Channelview	Enpro Systems LTD	L04990	Channelview	17	10/11/05
Corpus Christi	Driscoll Childrens Hospital	L04606	Corpus Christi	31	10/07/05
Dallas	Century Inspection Inc	L00062	Dallas	100	10/13/05
El Paso	Western Refining Company LP	L02669	El Paso	15	10/04/05
Fort Worth	Texas Steel Company	L00163	Fort Worth	39	10/13/05
Galveston	The University of Texas Medical Branch Office of Environmental Health & Safety	L01299	Galveston	68	10/14/05
Garland	Bonded Inspections Inc.	L00693	Garland	71	10/13/05
Hereford	Hereford Regional Medical Center	L03111	Hereford	11	10/06/05
Houston	American Diagnostic Tech LLC	L05514	Houston	19	10/14/05
Houston	Irisndt Inc.	L04769	Houston	19	10/11/05
Houston	Mallinckrodt Medical Inc.	L03008	Houston	70	10/13/05
Houston	Memorial Cardiology Associates PA	L05349	Houston	03	10/10/05
Houston	University of Texas MD Anderson Cancer Center	L00466	Houston	100	10/05/05
Jacksonville	East Texas Medical Center Jacksonville	L00169	Jacksonville	37	10/07/05
Jasper	Numed Imaging Centers Inc.	L05202	Jasper	04	10/07/05
Jasper	Numed Imaging Centers Inc.	L05202	Jasper	05	10/13/05
Kilgore	Laird Memorial Hospital DBA Laird Memorial Hospital	L03496	Kilgore	19	10/14/05
Killeen	Metroplex Hospital	L03185	Killeen	25	10/11/05
La Porte	Innovene USA LLC DBA Innovene Polyethylene North America	L00088	La Porte	52	10/11/05
Lake Jackson	Non Destructive Inspection Corp	L02712	Lake Jackson	121	10/12/05
Laredo	Laredo Texas Hospital company LP DBA Laredo Medical Center	L01306	Laredo	50	10/04/05
Lewisville	Cardiovascular Specialist PA	L05507	Lewisville	04	10/05/05

## AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED

Location	Name	License #	City	Amend- ment #	Date of Action
Longview	High Tech Testing Service Inc	L05021	Longview	53	10/17/05
Longview	King Tool Company	L05142	Longview	05	10/17/05
Lubbock	Texas Tech University Health Services Center	L01869	Lubbock	78	10/03/05
Mansfield	FTI Industries Inc.	L02810	Mansfield	13	10/13/05
McAllen	McAllen Hospitals LP DBA McAllen Medical Heart Hospital	L04902	McAllen	11	10/03/05
Mesquite	Southwest Cardiac Associates	L05589	Mesquite	01	10/14/05
Mineral Wells	Perry Equipment Corporation	L00330	Mineral Wells	37	10/13/05
Nacogdoches	Nacogdoches Medical Center	L02853	Nacogdoches	35	10/17/05
Paris	Turner Industries Group LLC	L05237	Paris	06	10/17/05
Pasadena	Fugro Consultants LP	L04322	Pasadena	78	10/05/05
Pasadena	Quantum Technical Services Inc.	L03731	Pasadena	24	10/11/05
Perryton	Midwest Inspection Services	L03120	Perryton	81	10/05/05
Perryton	Midwest Inspection Services	L03120	Perryton	82	10/13/05
Plano	Texas Regional Heart Center PA DBA Legacy Heart Center	L03704	Plano	28	10/06/05
Round Rock	Austin Heart PA DBA Austin Heart	L05456	Round Rock	13	10/07/05
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	83	10/04/05
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	84	10/12/05
San Antonio	Heart Hospital of San Antonio LP DBA Teksan Heart Hospital	L05722	San Antonio	05	10/05/05
San Antonio	Radiology Associates of San Antonio	L05358	San Antonio	19	10/04/05
San Antonio	The Univ. of Tx Science Center at SA DBA UTSCSA Research Imaging Center	L05556	San Antonio	07	10/04/05
San Antonio	The University of Texas Health Science Center at San Antonio	L01279	San Antonio	101	10/12/05
San Marcos	Austin Heart PA DBA Austin Heart San Marcos	L05452	San Marcos	14	10/07/05
San Marcos	Texas State University	L03321	San Marcos	20	10/13/05
Silsbee	Meadwestvaco Texas LLP	L01095	Silsbee	50	10/12/05
Sulphur Springs	Medical Surgical Clinic of Sulphur Springs DBA Sulphur Springs Family Health Care Associates	L05701	Sulphur Springs	07	10/07/05
Texarkana	Christus Health Ark-La-Tex DBA Christus Saint Michael Health System	L04805	Texarkana	14	10/13/05
Texas City	CHCA Mainland LP DBA Mainland Medical Center	L02577	Texas City	27	10/10/05
Tiki Island	Insight Health Corporation	L05504	Tiki Island	06	10/05/05
Tyler	Cardiovascular Associates of East Texas PA	L04800	Tyler	14	10/13/05
Tyler	H & H X-Ray Services Inc	L02516	Tyler	53	10/17/05
Tyler	Physician Reliance Network Inc.	L04788	Tyler	07	10/13/05
Wichita Falls	American Eagle Well Logging Inc	L04133	Wichita Falls	07	10/13/05
Throughout Tx	Acuren Inspection Inc	L01774	La Porte	215	10/13/05
Throughout Tx	Apex Inspections Inc	L05563	Carrollton	03	10/17/05
Throughout Tx	Catch A Fault	L02725	Ponder	18	10/13/05
Throughout Tx	Acuren Inspection Inc	L01774	La Porte	215	10/13/05
Throughout Tx	Drash Consulting Engineers Inc.	L04724	San Antonio	16	10/12/05
Throughout Tx	Exxonmobil Oil Corporation	L00603	Beaumont	69	10/05/05

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED

Location	Name	License #	City	Amendment #	Date of Action
Throughout Tx	Goolsby Testing Laboratories Inc.	L03115	Humble	77	10/14/05
Throughout Tx	Gray Wire Service Inc.	L03541	Levelland	12	10/13/05
Throughout Tx	Irisndt Inc.	L04769	Houston	20	10/13/05
Throughout Tx	JRD Aerospace	L05689	Tyler	02	10/17/05
Throughout Tx	Link Field Services Inc.	L05383	Olden	14	10/13/05
Throughout Tx	Lower Colorado River Authority	L02738	Austin	37	10/06/05
Throughout Tx	Ludlum Measurements Inc.	L01963	Sweetwater	74	10/10/05
Throughout Tx	M W Inspection	L04494	Mineral Wells	08	10/13/05
Throughout Tx	Master Wireline Services Inc.	L04161	Wichita Falls	06	10/13/05
Throughout Tx	Mundy Maintenance & Services LLC	L04360	Pampa	30	10/13/05
Throughout Tx	National Inspection Services	L05930	Crowley	03	10/04/05
Throughout Tx	National Inspection Services	L05930	Crowley	04	10/17/05
Throughout Tx	NDE Inc.	L02355	Fort Worth	22	10/13/05
Throughout Tx	NDE Solutions LLC	L05879	Bryan	02	10/11/05
Throughout Tx	N-Spec Quality Services Inc.	L05113	Corpus Christi	23	10/10/05
Throughout Tx	Oilfield Prolong Services Inc. DBA Pro-Long	L01828	Denver City	26	10/13/05
Throughout Tx	OSCS Inc.	L05813	Keene	02	10/06/05
Throughout Tx	Petrochem Inspection Services Inc.	L04460	Houston	64	10/06/05
Throughout Tx	Phoenix Surveys Inc.	L04108	Graham	14	10/13/05
Throughout Tx	Precision Energy Services Inc	L04286	Fort Worth	58	10/17/05
Throughout Tx	Probe Technology Services Inc	L05112	Fort Worth	15	10/17/05
Throughout Tx	Rentech Boiler Services Inc.	L05624	Abilene	05	10/13/05
Throughout Tx	Schlumberger Technology Corporation	L00764	Sugar Land	90	10/11/05
Throughout Tx	Team Cooperheat-MQS	L00087	Alvin	130	10/11/05
Throughout Tx	Texas Oncology PA DBA East Texas PET Imaging	L05489	Longview	14	10/12/05
Throughout Tx	Texas QA Services Inc	L04601	Grand Prairie	19	10/17/05
Throughout Tx	The Methodist Hospital	L00457	Houston	137	10/05/05
Throughout Tx	Thermo Measuretech	L03524	Round Rock	69	10/05/05
Throughout Tx	Weaver Services Inc DBA WSI Cased Hole Specialist	L01489	Snyder	26	10/13/05
Throughout Tx	Year Inc. DBA PSI-Paltec	L05851	Graham	01	10/13/05

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Houston	Veterinary Cancer Associates DBA Gulf Coast Vet Oncology DBA Gulf Coast Vet Diagnostic Imaging	L04803	Houston	11	10/06/05
Throughout Tx	Apac-Texas Inc. Buster Paving Division	L04886	Brashear	08	10/11/05
Throughout Tx	Mid-Tex Engineering & Testing LLC	L05175	Abilene	02	10/05/05

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Throughout Tx	Expro Americas	L05611	Alice	04	10/05/05

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC), Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49<sup>th</sup> Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200504828  
Cathy Campbell  
General Counsel  
Department of State Health Services  
Filed: October 26, 2005

Cathy Campbell  
General Counsel  
Department of State Health Services  
Filed: October 26, 2005

Notice of an Agreed Order issued on October 13, 2005, on Registrant Crosby Chiropractic Center, P.C.

An Agreed Order is hereby issued by the Department of State Health Services (department) to Crosby Chiropractic Center, P.C. (registration # R11891-000) of Crosby. A total penalty of \$4,500 shall be paid by registrant for violations of 25 Texas Administrative Code Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200504827  
Cathy Campbell  
General Counsel  
Department of State Health Services  
Filed: October 26, 2005

Notice of an Agreed Order issued on October 13, 2005, on Registrant Dimmit County Memorial Hospital

An Agreed Order is hereby issued by the Department of State Health Services (department) to Dimmit Count Memorial Hospital (registration # R01345-000) of Carrizo Springs. A total penalty of \$2,000 shall be paid by registrant for violations of 25 Texas Administrative Code Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200504826

## Houston-Galveston Area Council

### Request for Proposals

The Houston-Galveston Area Council solicits qualified organizations to assist The WorkSource in providing service to individuals affected by Hurricane Katrina and Hurricane Rita. Specifically, we are soliciting two types of projects: (1) outreach and recruiting efforts - organizations to outreach and recruit evacuees that are otherwise difficult to reach, and connect them to The WorkSource system, or business organizations, such as chambers of commerce and community business networks, to outreach evacuees and help place them with local businesses needing workers; and, (2) public service opportunities - organizations to develop and manage public service opportunities for individuals affected by Hurricane Katrina. A proposal package will be available for download at <http://theworksource.org/4contractor/rfp.html> and <http://h-gac.com> beginning at 12:00 noon Central Standard Time on Wednesday, October 19, 2005. Hard copies of the proposal package will also be available at that time. There is not a bidder's conference for this procurement. Proposals are due at H-GAC offices on or before 5:00 p.m. Central Daylight Time on Thursday, October 27, 2005. Mailed proposals must be postmarked no later than Tuesday, October 25, 2005. H-GAC will not accept late proposals; we will make no exceptions. Prospective bidders may contact Carol Kimmick at 713.627.3200 or [ckimmick@theworksource.org](mailto:ckimmick@theworksource.org) or visit the web site to request a proposal package.

TRD-200504718  
Jack Steele  
Executive Director  
Houston-Galveston Area Council  
Filed: October 19, 2005

## Texas Department of Insurance

### Company Licensing

Application to change the name of GENERAL ELECTRIC CAPITAL ASSURANCE COMPANY to GENWORTH LIFE INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Richmond, Virginia.



Application to change the name of GE LIFE AND ANNUITY ASSURANCE COMPANY to GENWORTH LIFE AND ANNUITY INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Richmond, Virginia.

Application to change the name of GE GROUP LIFE ASSURANCE COMPANY to GENWORTH LIFE AND HEALTH INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Enfield, Connecticut.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200504840

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: October 26, 2005



### Third Party Administrator Applications

The following third party administrator applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of REGIONAL CARE, INC., a foreign third party administrator. The home office is SCOTTSBLUFF, NEBRASKA.

Application for incorporation in Texas of LIFESTYLE BENEFITS NETWORK, LTD. (using the assumed name of LIFE PERKS BENEFITS NETWORK), a domestic third party administrator. The home office is AUSTIN, TEXAS.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200504841

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: October 26, 2005

## Texas Lottery Commission

### Instant Game Number 589 "Million Dollar Mania"

#### 1.0 Name and Style of Game.

A. The name of Instant Game No. 589 is "MILLION DOLLAR MANIA". The play style for Game 1 is "your beats theirs". The play style for Game 2 is "match up". The play style for Game 3 is "match up". The play style for Game 4 is "key number match with auto win".

#### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 589 shall be \$20.00 per ticket.

#### 1.2 Definitions in Instant Game No. 589.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, STAR SYMBOL, \$2.00, \$3.00, \$5.00, \$8.00, \$10.00, \$20.00, \$40.00, \$50.00, \$80.00, \$100, \$200, \$400, \$1,000, \$10,000, \$1MILL, BELL SYMBOL, DIAMOND SYMBOL, GOLD BAR SYMBOL, DOLLAR BILL SYMBOL, MONEY BAG SYMBOL, COIN SYMBOL, HORSESHOE SYMBOL and CLOVER SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 589 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
STAR SYMBOL	AUTO
\$2.00	TWO\$
\$3.00	THREE\$
\$5.00	FIVE\$
\$8.00	EIGHT\$
\$10.00	TEN\$

\$20.00	TWENTY
\$40.00	FORTY
\$50.00	FIFTY
\$80.00	EIGHTY
\$100	ONE HUND
\$200	TWO HUND
\$400	FOR HUND
\$1,000	ONE THOU
\$10,000	TEN THOU
\$1MILL	ONE MILL
BELL SYMBOL	BELL
DIAMOND SYMBOL	DMND
GOLD BAR SYMBOL	BAR
DOLLAR BILL SYMBOL	DOLR
MONEY BAG SYMBOL	BAG
COIN SYMBOL	COIN
HORSESHOE SYMBOL	SHOE
CLOVER SYMBOL	CLVR

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for val-

idation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 589 - 1.2E

CODE	PRIZE
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$20.00.

H. Mid-Tier Prize - A prize of \$30.00, \$40.00, \$50.00, \$80.00, \$100, \$200 or \$400.

I. High-Tier Prize - A prize of \$1,000, \$10,000 or \$1,000,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine

(9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (589), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 589-0000001-001.

L. Pack - A pack of "MILLION DOLLAR MANIA" Instant Game tickets contains 50 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 050 will be exposed on one side of the pack and ticket front 001 on the other side.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MILLION DOLLAR MANIA" Instant Game No. 589 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Proce-

dures, and the requirements set out on the back of each instant ticket. A prize winner in the "MILLION DOLLAR MANIA" Instant Game is determined once the latex on the ticket is scratched off to expose 53 (fifty-three) Play Symbols. GAME 1, if a player's YOUR NUMBER play symbol beats THEIR NUMBER play symbol within a line the player wins PRIZE shown for that line. GAME 2, if a player reveals 2 matching play symbols the player wins \$20 instantly. GAME 3, if a player reveals 3 matching play symbol amounts the player wins that amount. GAME 4, if a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols the player wins prize shown for that number. If a player reveals a star symbol the player wins the prize shown instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 53 (fifty-three) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 53 (fifty-three) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 53 (fifty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 53 (fifty-three) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed

in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Game 1: No duplicate non-winning prize symbols.

C. Game 1: No duplicate non-winning lines on a ticket.

D. Game 1: No ties between Your Number and Their Number within a line.

E. Game 3: No four or more of a kind.

F. Game 3: No three or more pairs.

G. Game 4: No duplicate non-winning Your Numbers play symbols on a ticket.

H. Game 4: No 3 or more like non-winning prize symbols on a ticket.

I. Game 4: Non-winning play symbols will never occur with the same prize symbol (i.e. 5 and \$5).

J. Game 4: No duplicate Winning Numbers play symbols on a ticket.

K. Game 4: Non-winning prize symbols will never be the same as the winning prize symbol(s) in this game.

L. Game 4: The auto win symbol will never appear more than once on a ticket.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "MILLION DOLLAR MANIA" Instant Game prize of \$20.00, \$30.00, \$40.00, \$50.00, \$80.00, \$100, \$200 or \$400, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$30.00, \$40.00, \$50.00, \$80.00, \$100, \$200 or \$400 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the

claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B, Section 2.3.C and Section 2.3.D of these Game Procedures.

B. To claim a "MILLION DOLLAR MANIA" Instant Game prize of \$1,000 or \$10,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "MILLION DOLLAR MANIA" Instant Game prize of \$1,000,000, the claimant must sign the winning ticket and present it at the Texas Lottery Commission Claim Center. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. The Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. As an alternative method of claiming a "MILLION DOLLAR MANIA" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.E of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "MILLION DOLLAR MANIA" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "MILLION DOLLAR MANIA" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 3,000,000 tickets in the Instant Game No. 589. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 589 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$20	780,000	3.85
\$30	150,000	20.00
\$40	60,000	50.00
\$50	60,000	50.00
\$80	60,000	50.00
\$100	40,000	75.00
\$200	12,375	242.42
\$400	2,125	1,411.76
\$1,000	875	3,428.57
\$10,000	50	60,000.00
\$1,000,000	3	1,000,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 2.57. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 589 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 589, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200504813

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: October 25, 2005



#### Instant Game Number 623 "Raise the Stakes"

##### 1.0 Name and Style of Game.

A. The name of Instant Game No. 623 is "RAISE THE STAKES". The play style for the game Blackjack is "beat score". The play style for the game Roulette is "key number match".

##### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 623 shall be \$7.00 per ticket.

##### 1.2 Definitions in Instant Game No. 623.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, \$1.00, \$2.00, \$4.00, \$5.00, \$7.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$100, \$500, \$2,000 and \$75,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 623 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	SWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$7.00	SEVEN\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$25.00	TWY FIV
\$50.00	FIFTY

<b>\$100</b>	<b>ONE HUND</b>
<b>\$500</b>	<b>FIV HUND</b>
<b>\$2,000</b>	<b>TWO THOU</b>
<b>\$75,000</b>	<b>75 THOU</b>

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for val-

idation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 623 - 1.2E

<b>CODE</b>	<b>PRIZE</b>
<b>SVN</b>	<b>\$7.00</b>
<b>TEN</b>	<b>\$10.00</b>
<b>FTN</b>	<b>\$15.00</b>
<b>TWN</b>	<b>\$20.00</b>

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$7.00, \$10.00, \$15.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

I. High-Tier Prize - A prize of \$2,000 or \$75,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (623), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 623-0000001-001.

L. Pack - A pack of "RAISE THE STAKES" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front 075.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery

pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "RAISE THE STAKES" Instant Game No. 623 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "RAISE THE STAKES" Instant Game is determined once the latex on the ticket is scratched off to expose 63 (sixty-three) Play Symbols. In the game Blackjack, if player's Your Total play symbol beats the Dealer's Total play symbol within the same game the player wins Prize shown for that game. In the game Roulette, if a player matches any of Your Numbers play symbols to the Wheel Number play symbol within the same wheel the player wins Prize shown for that number. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 63 (sixty-three) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;



7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 63 (sixty-three) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 63 (sixty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 63 (sixty-three) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

- A. Consecutive non-winning tickets will not have identical play data, spot for spot.
- B. No four or more like non-winning prize symbols on a ticket.
- C. Blackjack: No duplicate non-winning prize symbols within a game.
- D. Blackjack: No duplicate non-winning games on a ticket.

E. Blackjack: No ties between Your Total and the Dealer's Total within a game.

F. Roulette: No duplicate non-winning prize symbols within a game.

G. Roulette: No duplicate non-winning games on a ticket.

H. Roulette: No duplicate WHEEL NUMBERS play symbols on a ticket.

I. Roulette: A non-winning YOUR NUMBER play symbol will never match a WHEEL NUMBER play symbol on either of the other two Roulette games.

J. Roulette: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and \$5).

## 2.3 Procedure for Claiming Prizes.

A. To claim a "RAISE THE STAKES" Instant Game prize of \$7.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "RAISE THE STAKES" Instant Game prize of \$2,000 or \$75,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "RAISE THE STAKES" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp pro-

gram or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "RAISE THE STAKES" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "RAISE THE STAKES" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or

within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 623. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 623 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$7	1,142,400	4.41
\$10	336,000	15.00
\$15	134,400	37.50
\$20	134,400	37.50
\$50	67,200	75.00
\$100	33,222	151.71
\$500	672	7,500.00
\$2,000	80	63,000.00
\$75,000	10	504,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 2.73. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 623 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 623, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200504814

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: October 25, 2005



### Instant Game Number 632 "Betty Boop"

#### 1.0 Name and Style of Game.

A. The name of Instant Game No. 632 is "BETTY BOOP". The play style is "key number match with auto win".

#### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 632 shall be \$2.00 per ticket.

#### 1.2 Definitions in Instant Game No. 632.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, BB SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$200, \$2,000 and \$20,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 632 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
BB SYMBOL	WIN ALL
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$200	TWO HUND
\$2,000	TWO THOU
\$20,000	20 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for val-

idation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 632 - 1.2E

CODE	PRIZE
TWO	\$2.00
FOR	\$4.00
FIV	\$5.00
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00 or \$200.

I. High-Tier Prize - A prize of \$2,000 or \$20,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (632), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 632-0000001-001.

L. Pack - A pack of "BETTY BOOP" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 001 and 002 will be on the top page; tickets 003 and 004 on the next page; etc.; and tickets 249 and 250 will be on the last page. Please note the books will be in an A - B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BETTY BOOP" Instant Game No. 632 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BETTY BOOP" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If any of the player's YOUR NUMBERS play symbols match either WINNING NUMBER play symbol the player wins the PRIZE shown for that number. If a player reveals a BB symbol the player wins all 10 prizes shown instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another un-

played ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

- A. Consecutive non-winning tickets will not have identical play data, spot for spot.
- B. No more than one pair of non-winning prize symbols on a ticket.
- C. No duplicate non-winning Your Numbers play symbols on a ticket.
- D. No duplicate Winning Numbers play symbols on a ticket.
- E. The BB win all play symbol will only appear as dictated by the prize structure and only once on a ticket.
- F. When the BB win all play symbol appears, there will be no occurrence of a Your Numbers play symbol matching either Winning Number play symbol.
- G. Non-winning prize symbols will never be the same as the winning prize symbol(s).
- H. No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and \$5).

## 2.3 Procedure for Claiming Prizes.

A. To claim a "BETTY BOOP" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00 or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BETTY BOOP" Instant Game prize of \$2,000 or \$20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BETTY BOOP" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

- 1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
  - 2. delinquent in making child support payments administered or collected by the Attorney General;
  - 3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
  - 4. in default on a loan made under Chapter 52, Education Code; or
  - 5. in default on a loan guaranteed under Chapter 57, Education Code.
- E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "BETTY BOOP" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "BETTY BOOP" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

## 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment

to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 tickets in the Instant Game No. 632. The approximate number and value of prizes in the game are as follows:

**Figure 3: GAME NO. 632 - 4.0**

<b>Prize Amount</b>	<b>Approximate Number of Winners*</b>	<b>Approximate Odds are 1 in**</b>
<b>\$2</b>	<b>1,280,160</b>	<b>7.87</b>
<b>\$4</b>	<b>695,520</b>	<b>14.49</b>
<b>\$5</b>	<b>120,960</b>	<b>83.33</b>
<b>\$10</b>	<b>131,040</b>	<b>76.92</b>
<b>\$20</b>	<b>60,480</b>	<b>166.67</b>
<b>\$50</b>	<b>44,520</b>	<b>226.42</b>
<b>\$200</b>	<b>8,232</b>	<b>1,224.49</b>
<b>\$2,000</b>	<b>50</b>	<b>201,600.00</b>
<b>\$20,000</b>	<b>13</b>	<b>775,384.62</b>

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.31. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 632 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 632, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200504815  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: October 25, 2005



## **Manufactured Housing Division**

### **Notice of Public Hearing**

Notice is hereby given of a public hearing to be held by the Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") at 1:00 p.m. on Friday, De-

cember 9, 2005, at the William B. Travis State Office Building, 1701 N. Congress, Room: 1-100, Austin, Texas 78701. The public hearing is to accept comments on amendments to §80.208 proposed rule to Title 10 Texas Administrative Code, Chapter 80 (West) ("Rules"). The proposed rules are published in this issue of the *Texas Register*.

All interested parties are invited to attend such public hearing to express their views with respect to the proposed amendments to the manufactured housing rules. Questions or requests for additional information may be directed to Sharon S. Choate at the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, 507 Sabine Street, 10th Floor, Austin, Texas 78701, telephone (512) 475-2206, or e-mail at [sharon.choate@tdhca.state.tx.us](mailto:sharon.choate@tdhca.state.tx.us).

Persons who intend to appear at the hearing and express their views are invited to contact Sharon S. Choate in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their comments in writing to Sharon S. Choate prior to the date scheduled for the hearing. Written comments may be sent to the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, P. O. Box 12489, Austin, Texas 78711-2489, faxed to (512) 475-4250, or e-mailed to [sharon.choate@tdhca.state.tx.us](mailto:sharon.choate@tdhca.state.tx.us).

This notice is published and the above-described hearing is to be held in satisfaction of the requirements of the Texas Manufactured Housing Standards Act; Occupations Code, Subtitle C, Chapter 1201; and Title 10, Texas Administrative Code (West).

Individuals who require auxiliary aids for this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943, or Relay Texas at 1 (800) 735-2989 at least two days prior to the meeting so that appropriate arrangements can be made.

TRD-200504804  
Timothy K. Irvine  
Executive Director  
Manufactured Housing Division  
Filed: October 24, 2005

◆ ◆ ◆  
**Texas Department of Public Safety**

**Hazard Mitigation Grant Program for Hurricane Rita  
(DR-1606)**

The President has declared a major disaster (DR-1606) as a result of Hurricane Rita. Because of this, the federal Hazard Mitigation Grant Program (HMGP) is available statewide. The State will give priority to applications from the counties included in the Presidential major disaster declaration.

The State has established the following deadline. Notices of Interest (NOIs) for HMGP project grants must be submitted/postmarked by Monday, November 7, 2005.

The standard *Notice of Interest and Hazard Mitigation Team Report* form is to be used. The NOI form, as well as instructions for completing the form (Mitigation Job Aid #1) are available for download from hazard mitigation documents off the Division of Emergency Management (DEM) web-site at <http://www.txdps.state.tx.us/dem/>. After processing submissions, the Division of Emergency Management will provide point-of-contact with additional guidance and establish a deadline for return of completed applications, approximately 30 days later.

Please refer e-mail NOI forms and questions to the:

Hurricane Rita HMGP Project Officer

Hildy Soper

Phone: (512) 977-4118

E-mail: [hildy.soper@associates.dhs.gov](mailto:hildy.soper@associates.dhs.gov)

If mailing or faxing in NOIs, send to:

FEMA-JFO

9001 IH 35

Northview Business Center, Suite 101

Austin, Texas 78753

FAX: (512) 908-8870

Attention: Hildy Soper, State Hazard Mitigation

TRD-200504767

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Filed: October 21, 2005

◆ ◆ ◆  
**Notice of Public Hearing**

The Texas Department of Public Safety, in accordance with Administrative Procedures and Texas Register Act, Texas Government Code, Chapter 2001, et seq., and Texas Transportation Code, Chapter 644, is holding a public hearing on November 10, 2005, at 9:00 a.m., in the

Texas Department of Public Safety, Texas Highway Patrol Division, Conference Room B, 5805 North Lamar, Austin, Texas.

The purpose of this hearing is to receive comments from all interested persons regarding adoption of Administrative Rule §4.21, regarding Hazardous Material and Transportation Safety, proposed for adoption under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles. The proposed rule was published in the September 30, 2005, issue of the *Texas Register* (30 TexReg 6257).

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major Mark Rogers, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print, or Braille, are requested to contact Major Rogers at (512) 424-2116, three working days prior to the hearing so that appropriate arrangements can be made.

TRD-200504766

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Filed: October 21, 2005

◆ ◆ ◆  
**Public Utility Commission of Texas**

**Notice of Application for Amendment to Service Provider  
Certificate of Operating Authority**

On October 14, 2005, Time Warner Cable filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60670. Applicant intends to reflect a discontinuance of its provision of traditional switched telephone services in the Plum Creek subdivision located in Kyle, Texas.

The Application: Application of Time Warner Cable for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 31891.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 9, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31891.

TRD-200504709

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: October 19, 2005

◆ ◆ ◆  
**Notice of Application for Amendment to Service Provider  
Certificate of Operating Authority**

On October 21, 2005, McLeodUSA Telecommunications Services, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating



authority (SPCOA) granted in SPCOA Certificate Number 60078. Applicant intends to reflect a change in ownership/control.

The Application: Application of McLeodUSA Telecommunications Services, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 31938.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 9, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31938.

TRD-200504819  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 25, 2005



#### Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on October 21, 2005, for designation as an eligible telecommunications carrier pursuant to P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of Plateau Telecommunications, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to 47 U.S.C. §214(e)(2) and P.U.C. Substantive Rule §26.418. Docket Number 31944.

The Application: The company is requesting ETC designation in the rural study areas identified in Attachment C to its application.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 23, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31944.

TRD-200504820  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 25, 2005



#### Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of a joint application for sale, transfer, or merger filed with the Public Utility Commission of Texas on October 21, 2005, pursuant to the Public Utility Regulatory Act, Texas Utility Code Annotated §§14.101 and 37.154 (Vernon 1998 & Supplement 2005) (PURA).

Docket Style and Number: Joint Application of LCRA Transmission Services Corporation and New Braunfels Utilities to Transfer Facilities, Docket Number 31946.

The Application: On October 21, 2005, LCRA Transmission Services Corporation (LCRA TSC) and New Braunfels Utilities (NBU) (collectively, Applicants) filed an application to report a proposed sale of

certain substation facilities. LCRA TSC and NBU executed an Electric Transmission Asset Purchase Agreement (Agreement) for the transfer of substation assets from NBU to LCRA TSC in an effort to increase transmission capacity between the New Braunfels and Seguin areas. As a result, certain Hortontown Substation facilities currently owned by NBU require an upgrade to accommodate the increase in transmission capacity. Because the necessary substation upgrade at the Hortontown Substation is related to LCRA TSC's transmission corridor, NBU and LCRA TSC agreed that LCRA TSC should perform the substation upgrade. The Hortontown Substation is located at 1242 Industrial Drive, 0.28 miles from the intersection of Highway 46 (Loop 337) and Industrial Drive in Comal County.

The Agreement transfers 138-kV bus and structures, and foundations and switches located within NBU's Hortontown Substation. Following the transfer, LCRA TSC will upgrade five 138-kV switches, add one new 138-kV switch, and upgrade the bypass switch port of the 138-kV bus. The Hortontown Substation requires the upgrades in order to accommodate a necessary increase in transmission line capacity in coordination with the 345/138-kV Clear Springs Autotransformer Addition project that will increase transmission reliability and reduce local transmission congestion in the area.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing-and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 31946.

TRD-200504818  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 25, 2005



#### Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on October 19, 2005, for a service provider certificate of operating authority (SPCOA), pursuant to Public Utility Regulatory Act (PURA) §§54.151 - 54.156. A summary of the application follows.

Docket Title and Number: Application of Vertex Communications, Incorporated for a Service Provider Certificate of Operating Authority, Docket Number 31927 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 9, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31927.

TRD-200504752

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 21, 2005

◆ ◆ ◆  
**Notice of Application to Relinquish a Service Provider  
Certificate of Operating Authority**

On October 20, 2005, Carrera Communications, Inc. filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60211. Applicant intends to relinquish its certificate.

The Application: Application of Carrera Communications, Inc. to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 31932.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 9, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31932.

TRD-200504817  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 25, 2005

◆ ◆ ◆  
**Public Notice of Workshop Regarding Monitoring Transition  
Plans to Migrate Embedded Base of Unbundled Local Circuit  
Switching**

The Public Utility Commission of Texas (commission) will hold a workshop regarding the migration of the embedded base of unbundled local circuit switching used to serve mass market customers to an alternative service arrangement, as established by the FCC in the Triennial Review Order on Remand (TRRO), on Wednesday, November 9, 2005, at 9:00 a.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 31947, *Project to Monitor Transition Plan to Migrate Embedded Base of Unbundled Local Circuit Switching*, has been established for this proceeding.

The commission requests that interested persons come to the workshop prepared to discuss issues and provide information regarding the progress being made in transition plans, including deployment of competitive infrastructure, negotiations of alternative access arrangements, performance of any loop cut-overs or other conversions, and efforts being made to meet hot cut demand while preventing unnecessary customer disruption. Specifically, the commission requests that parties be prepared to answer the following questions:

1. What impact, if any, will the transition have on the affected end-users for a UNE-P to resale transition? UNE-P to UNE-L transition? Transition from UNE-P to another carrier's switch?
2. When will the transitions be implemented? (*i.e.*, Are the transitions taking place now? Will they be spread out over a period of time or will they be implemented in March 2006?)

3. Are the transitions taking place in accordance with the FCC's TRRO?

4. For information identified in response to Question No. 2, is the information currently collected and available for review by the commission?

- a. If yes, where is the information located, and how may it be obtained?
- b. If not, who could best provide the information to the commission? Would this information need to be compiled in some manner? If so, who should do the compilation?

Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 by noon Tuesday, November 8, 2005. All responses should reference Project Number 31947. The commission requests that parties identify the question for which a response is being provided, and respond to the questions in sequential order. Parties are urged to include everything they wish to discuss in their comments; if a party wishes to make a presentation at the workshop, it must be included in the comments submitted on Tuesday, November 8, 2005. The commission requests that comments be limited to 15 pages (including attachments). Parties that wish to establish a conference bridge for non-local participants must contact commission Staff with the call-in number and passcode no later than 3:00 p.m. on Tuesday, November 8, 2005.

Prior to the workshop, the commission shall make available in Central Records under Project Number 31947 an agenda for the format of the workshop and conference call information, if available.

Questions concerning the workshop or this notice should be referred to Bryan Kelly, Communications Industry Oversight Division at (512) 936-7216 or Diane Parker, Commission Advising and Docket Management Division at (512) 936-7204. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200504842  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 26, 2005

◆ ◆ ◆  
**Texas A&M University, Board of Regents**

**Award of Consultant Contract Notification**

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, The Texas A&M University System furnishes this notice of consultant contract awards. The consultants will provide bond counsel services for The Texas A&M University System. A notice for request for proposals was filed in the June 24, 2005, issue of the *Texas Register* (30 TexReg 3762).

Two one-year contracts were awarded; one to Vinson & Elkins, L.L.P., c/o Jerry Turner, The Terrace 7, 2801 Via Fortuna, Suite 100, Austin, Texas 78746 with a value of \$250,000.00 and one to McCall, Parkhurst & Horton, L.L.P., c/o Rick Porter, 717 North Harwood, 9th Floor, Dallas, Texas 75201-6587 with a value of \$300,000.00. The beginning dates of the contracts were September 1, 2005.

Selection criteria included competence, experience, knowledge, and qualifications. Proposals were received before 5:00 p.m. on July 15, 2005.

The necessity of these legal services has been affirmed by the Texas A&M University System since the required skills and resources needed

for these legal services are not available within the Texas A&M University System or any other known agency of the State of Texas.

Maria L. Robinson

Director of Financial Planning

Office of the Treasurer

The Texas A&M University System

200 Technology Way, Suite 1120

College Station, Texas 77845

TRD-200504829

Vickie Burt Spillers

Executive Secretary to the Board

Texas A&M University, Board of Regents

Filed: October 26, 2005



## Texas Tech University System

### Request for Information - Bond Counsel

Texas Tech University System (TTUS) requests information from law firms interested in representing TTUS in tax-exempt bond matters. This RFI is issued for the purpose of establishing a referral list from which TTUS, by and through its Office of General Counsel, will select appropriate counsel for representation on specific bond matters as the need arises. These needs include the usual and necessary services of a bond counsel in connection with the issuance, sale and delivery of bonds and notes on which the interest is excludable from gross income under existing federal tax law.

Proposals sent in response to this RFI will be evaluated in light of several criteria, including: expertise, availability of a lead attorney, prior experience in handling bond-related matters relating to higher education, and procedures for providing timely and cost-effective services. Although the fee structure and overall cost of this representation will be an extremely important factor in arriving at the final successful firm, that firm will clearly demonstrate exceptional expertise and experience with the bond matters made the subject of this RFI. All responses must be received by the TTU's Office of Contracting at the address set forth above no later than 5:00 p.m., Friday, November 11, 2005. Any proposals received after that time will be returned unopened.

TRD-200504719

Jennifer Adling

Director of Contracting

Texas Tech University System

Filed: October 19, 2005



## Texas Department of Transportation

### Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Childress, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: City of Childress, Childress Municipal Airport. TxDOT CSJ No.: 0625CHLDR. Scope: Provide engineering/design services to rehabilitate the apron; rehabilitate & mark taxiways; replace

rotating beacon & tower; install signage; install PAPI-2 Runway 17-35; and associated appurtenances at the Childress Municipal Airport.

The HUB goal is set at **10%**. TxDOT Project Manager is Russell Deason.

To assist in your proposal preparation, the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online at [www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm](http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm) by selecting "Childress Municipal Airport".

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be e-mailed by request or downloaded from the TxDOT web site, URL address <http://www.dot.state.tx.us/avn/avn550.doc>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT web site as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

Six completed, unfolded copies of Form AVN-550 must be postmarked by U. S. Mail by midnight December 2, 2005 (CST). Mailing address: TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. on December 5, 2005 (CST). Overnight address: TxDOT Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. December 5, 2005 (CST). Hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by e-mail will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The Consultant Selection Committee (committee) will be composed of one local government member and Aviation Division staff members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at [www.dot.state.tx.us/business/avn-consultinfo.htm](http://www.dot.state.tx.us/business/avn-consultinfo.htm). All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following the interviews.

If there are any procedural questions, please contact Edie Stimach, Grant Manager, or Russell Deason, Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-200504809

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: October 25, 2005



### Public Hearing Notice - Highway Project Selection Process

In accordance with Transportation Code, §201.602, the Texas Transportation Commission (commission) will conduct a public hearing to receive data, comments, views, and/or testimony concerning the commission's highway project selection process and the relative importance of the various criteria on which the commission bases its project selection decisions. It is emphasized that the subject of the hearing will be the procedure by which projects are selected and not the merits or details of specific projects themselves.

The public hearing will be held on Thursday, November 17, 2005, at 9:00 a.m., in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 E. 11th Street, Austin, Texas. The hearing will be held in accordance with the procedures specified in 43 TAC §1.5. Any interested person may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the commission as may be necessary to ensure a complete record. While any person with pertinent comments or testimony concerning the selection procedure will be granted an opportunity to present them during the course of the hearing, the commission reserves the right to restrict testimony in terms of time and repetitive comment. Organizations, associations, or groups are encouraged to present their commonly-held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend the hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Randall Dillard, Director, Public Information Office, at 125 E. 11th St., Austin, Texas 78701-2383, or (512) 463-8588 at least two working days prior to the hearing so that appropriate arrangements can be made.

Highway project selection information will be available at the Texas Department of Transportation's Riverside Annex, 118 E. Riverside Drive, Bldg. 118, Room 2B-6, Austin, Texas, (512) 486-5050. Written comments may be submitted to the Texas Department of Transportation, Attention: James L. Randall, P.E., P. O. Box 149217, Austin, Texas 78714-9217. The deadline for receipt of comments is 5:00 p.m. on December 19, 2005.

TRD-200504770  
Bob Jackson  
Deputy General Counsel  
Texas Department of Transportation  
Filed: October 24, 2005

#### Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site: <http://www.dot.state.tx.us>.

Click on Aviation, then click on Aviation Public Hearing. Or, contact Joyce Moulton, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 800-68-PILOT.

TRD-200504810  
Bob Jackson  
Deputy General Counsel  
Texas Department of Transportation  
Filed: October 25, 2005

### Texas Water Development Board

#### Eligible County List

Pursuant to 31 TAC §355.72(a), each year since 1995 the Texas Water Development Board (the board), has published a list of the counties that met criteria for participation in the Economically Distressed Areas Program established in Water Code §16.341 and §17.923. The 79th Legislature enacted two separate bills, Senate Bill 425 and House Bill 467 both of which amend Water Code §16.341 and §17.923. Senate Bill 425 amends both Water Code §16.341 and §17.923 by adding a new category of eligible counties while retaining the current statutory criteria for county eligibility. House Bill 467 amends Water Code §16.341 in a manner that eliminates the eligibility criteria which requires publication of a county eligibility list and deletes Water Code §17.923. Both bills are effective September 1, 2005. Due to the conflicting provisions, the board has requested an opinion from the Attorney General to identify the effective statutory provision. Pending the response of the Attorney General and pursuant to 31 TAC §355.72(a), the board through its executive administrator, publishes the following list of Texas counties which are eligible to apply for financial assistance from the Economically Distressed Areas Program according to the statutory provisions in effect prior to September 1, 2005: Brewster County, Brooks County, Cameron County, Dimmit County, Duval County, El Paso County, Hidalgo County, Hudspeth County, Jasper County, Jeff Davis County, Kinney County, Matagorda County, Maverick County, Newton County, Presidio County, Reeves County, Starr County, Terrell County, Tyler County, Val Verde County, Webb County, Willacy County, Zapata County, and Zavala County. If the Attorney General issues an opinion concluding that the provisions of Senate Bill 425 are effective, the board will publish the list of counties eligible for assistance according to the amended statutory provisions. If the Attorney General issues an opinion concluding that the provisions of House Bill 467 are effective, the board will no longer publish such a list.

TRD-200504837  
Jonathan Steinberg  
Deputy Counsel  
Texas Water Development Board  
Filed: October 26, 2005

### How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

### Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

*Part I. Texas Department of Human Services*

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).